Subject: Biodiesel and the CARB Administrative Regulations Review
Resent-From: regreview@arb.ca.gov
Date: Sat, 24 Jan 2004 11:27:50 -0800
From: Joe Gershen <joegershen@labiofuel.com>
To: regreview@arb.ca.gov

Diane Johnston
General Counsel
CARB

Dear Ms. Johnston,

I have a small business in Southern California with the mission to educate, promote, distribute and ultimately manufacture biodiesel in this region of the state. My early work has been with local businesses and municipalities of varying sizes. The overall response to biodiesel as a fiscally viable, environmentally advantageous, and domestically secure solution to emissions regulations which comply with EPACT requirements has been overwhelming from these business and governmental entities, not to mention people in the community that are learning of biodiesel's promise.

My business is in its infancy and I feel that the compliance inconsistencies that exist between the proposed CARB rules and EPACT will dramatically impact my future efforts in a very negative way, not to mention the many organizations who no longer will be able to look to biodiesel as an integral part of their EPACT compliance strategy.

We are all struggling to find a viable way to be good environmental citizens while we keep our businesses and organizations afloat. There is tremendous excitement and business potential surrounding biodiesel and I think that it's very important for CARB to revise this proposed rule to include biodiesel.

Thank you for your consideration.

Sincerely,

Joe Gershen
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Joe Gershen
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AMERICAN HEALTH & BEAUTY AIDS INSTITUTE
401 North Michigan Ave. Suite 2200
Chicago, Illinois 60611

January 30, 2004

Ms. Diane Johnston
General Counsel
California Air Resources Board
1001 "I" Street
Post Office Box 2815
Sacramento, California 95812

Re: Executive Order 2-2-03
Review of ARB Rules

Dear Ms. Johnston:

I am the executive director of the American Health & Beauty Aids Institute (AHBAI), a national trade association that represents fourteen companies that sell personal care products to ethnic consumers. These companies are all small, minority-owned firms. One of our member companies is located in California, Clear Essence Cosmetics based in Ontario, California.

Our companies manufacture and distribute hair care, skin care, shaving and cosmetic products. Some familiar brands include Isoplus, Pink Oil, Pro-Line, Soft-Sheen/Carson and Bronner Bros. products.

Over the past 15 years, the Air Resources Board (ARB) has passed very strict VOC limits for several products sold by our member companies. Our members' hair shine products were the subject of Mid-term Measures 2 and require a difficult formulation. Right now, member companies are going to great lengths, spending a lot of money and time to reformulate their hair shine products to meet a 2005 deadline. Also, our companies have had to reformulate other hair care and styling products for the California market including hair sprays.

The Air Resources Board plans for consumer products would hurt the performance and effectiveness of products that California consumers of ethnic products expect.

If the products do not meet consumers' expectations, they won't sell.

If future rules take away companies' formulation options or ban certain product forms, then their ability to innovate and grow in other product areas will be stifled.

As a result, there will be lost sales, lost jobs, and lost tax revenue for the state.

We believe it is imperative that the Air Resources Board understands the severe impact that the Midterm Measures 2 have had on small businesses and also that their plea for future rules affecting several types of personal care products would result in little environmental benefit, but would exact a high cost on small businesses.

If you have questions or require additional information, feel free to contact me at 312-644-6610.

Sincerely,

Geri Duncan Jones
Executive Director

National Biodiesel Board
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January 28, 2004

Mr. Allan Lloyd
Chairman
California Air Resources Board
1001 I Street
Sacramento, California 95814

RE: Executive Order S-2-03 Regulatory Review

Dear Chairman Lloyd:

The National Biodiesel Board appreciates this opportunity to provide comments detailing how certain regulatory actions taken by the Air Resources Board have had a direct impact on the biodiesel industry. Our comments will focus on the adoption of the "Diesel Retrofit Verification Procedure".

Introduction and Background
Biodiesel is a clean burning alternative fuel, produced from domestic, renewable resources. Biodiesel contains no petroleum, but it can be blended at any level with petroleum diesel to create a biodiesel blend. It can be used in compression-ignition (diesel) engines with no major modifications. Biodiesel is simple to use, biodegradable, nontoxic, and essentially free of sulfur and aromatics.

The National Biodiesel Board (NBB) is the national trade association representing the biodiesel industry as the coordinating body for research and development in the US. Since its founding in 1992, the NBB has developed into a comprehensive industry association, which coordinates and interacts with a broad range of cooperators including industry, government, and academia. NBB's membership is comprised of state, national, and international feedstock and feedstock processor organizations, biodiesel producers, suppliers, fuel marketers and distributors, and technology providers.

California presents the biodiesel industry with considerable market opportunities, as well as significant barriers. The biodiesel industry has developed a sizeable presence in the state with six fuel production and marketing companies having California based operations and several out-of-state based fuel producers providing supply to in-state consumers and fuel marketers. In-state fleet managers and individual consumers have recognized the emissions, health, energy security, and local economic benefits of biodiesel. As a result, demand for the fuel has grown at a steep rate. In just three years the demand for biodiesel has grown from relative obscurity to over 4 million gallons of consumption in 2002. Nationally, biodiesel consumption has grown from 500,000 gallons of consumption in 1999 to a projected level of 25 million gallons of consumption in 2003. In fact, the U.S. Department of Energy has recognized biodiesel as the fastest growing alternative fuel for the past two consecutive years.

The Diesel Retrofit Verification Procedure, and its tie-in with Diesel PM Air Toxic Control Measures, Directly Impacts the Biodiesel Industry.
The biodiesel industry recognizes the importance of policies to protect the public from the harmful impacts of particulate matter and is not opposing the ARB's designation of diesel PM as a toxic air contaminant (TAC). However, the industry has significant distress with the Diesel Retrofit Verification Procedure which limits compliance options under the regulatory measures adopted to mitigate the public's exposure to diesel PM. The compliance requirements of the diesel air toxic control measures, particularly involving in-use engines, are tied directly to the Diesel Retrofit Verification Procedure. If a diesel emission control strategy has not undergone this process to receive verification, then it can not be eligible for use in/on the

regulated engines. Biodiesel and biodiesel blends realize considerable PM reductions from all diesel engine makes and model years but are not eligible control strategies as they have not undergone the Diesel Retrofit Verification Procedure. Therefore, until such time verification is achieved, biodiesel can not be burned in regulated engines.

As a Practical Matter, the Current Requirements of the Diesel Retrofit Verification Procedure Will Continue to Preclude Biodiesel From Achieving Verification and Therefore Use Under the Diesel PM Air Toxic Control Measures, Even Though Biodiesel Achieves Considerable Criteria Pollutant Reductions in All Diesel Engines.

It has been expressed to our industry that only verified control devices will be eligible for use under the diesel PM air toxic control measures and that alternative diesel fuels, such as biodiesel, are not prohibited from undergoing the established engine certification procedures, or the process to be verified as a stand alone strategy or used in combination with a hardware device. With respect to biodiesel, nothing on the face of the ATCM's expressly prohibit biodiesel from being used in engines of the covered fleets. However as a practical matter, biodiesel is functionally precluded from use. The biodiesel industry has been working with OEM's and engine manufactures for more than a decade to build their confidence in the fuel with the anticipation engines will be certified using petroleum diesel and biodiesel. Significant progress has been made but engine certification using biodiesel remains a long time in the making.

Regarding verification as a stand alone fuel retrofit strategy, the threshold required for verification as a PM reduction strategy nullifies the quantifiable PM benefits of viable biodiesel blends like B20. By not meeting the threshold reductions, a strategy that does achieve considerable, quantifiable PM reductions, such as B20, is excluded from the toolbox of strategies that can be employed by covered fleets.

Verifying a retrofit system that combines the use of biodiesel with a hardware technology is not an economically viable option for fleets, nor is it an option for all engine makes and model years. Wide-scale development of DPF and DOC technologies has not materialized through the promulgation of the many PM rules over the past few years. Verified DPF and DOC technologies are available from only a limited number of providers and have yet to be verified for use on all diesel engine makes and model years. Biodiesel on the other hand can achieve considerable PM reductions from all makes and model years.

Without flexibility in the threshold requirements of the Diesel Retrofit Verification Procedure that account for the emission benefits of biodiesel and blends, then biodiesel will be effectively precluded from use in practically all diesel powered fleets in California.

Fleets Have Already Moved Away From Biodiesel Due to the Requirements of the Diesel Retrofit Verification Procedure. The Largest Market for Biodiesel in California is Threatened.

The industry's concerns are not hypothetical but are the result of real-world experience. Fleets presently using biodiesel, primarily a B20 blend, are being required to move away from biodiesel and toward particulate filters and catalysts, or natural gas engines due to the compliance requirements of adopted air toxic control measures. These required moves have had an economic impact on the industry. To exemplify, a solid waste collection company in southern California was operating its entire fleet of approximately 100 trucks on a B20 blend. As a result of the adoption of the Solid Waste Collection Vehicle ATCM in 2003, the fleet manager informed me they have stopped using biodiesel and implemented particulate filters on a small number of trucks in order to be in compliance with the rule. Not only does this have a direct impact to our member fuel producers and suppliers, it also has an immediate negative air quality impact on those neighborhoods where the trucks are now operating solely on petroleum diesel fuel. This is one specific example and there are others.

A major driver for biodiesel has been its inclusion as a compliance strategy under the Energy Policy Act (EPACT) and Executive Order 13149, which requires federal fleets to reduce their petroleum dependence 20% by 2005. EPACT and Executive Order 13149 covered fleets comprise better than 50-60% of total California biodiesel sales and consumption. The pending Public Fleet Rule encompasses EPACT and Executive Order 13149 covered fleets. The outcome of this rule could have a significant negative economic consequence for the biodiesel industry. If these fleets can not use biodiesel as a means of complying with the Public Fleet Rule then they will not be able employ it as a compliance strategy to meet their federal mandates. Impacting this market in California will have ripple effects for the industry nationally. EPACT has been a driver for the biodiesel market and helped it realize over 200% growth in demand since 1999. At that time, national consumption was around 500,000 gallons. 2003's estimated

consumption is reported to be approximately 25 million gallons. California's use of biodiesel has mirrored the national demand curve. Consumption has risen from relative obscurity just three years ago to a demand of more than 4 million gallons in 2002. This represented approximately 27% of national consumption. The industry is starting to make capital investments in California to establish production facilities. This is creating jobs and providing economic opportunities for subsidiary industries that provide goods and services to the biodiesel industry. Implementing a Public Fleet Rule that could potentially eliminate 50-60% of the biodiesel market will effectively shut down the industry in California and substantially curtail biodiesel's effort to move further into national marketplace.

Conclusion.
Biodiesel is a known quantity in terms of its emissions profile, toxicity, and operability. These characteristics have been widely scrutinized by government, academia, and industry. It has proven itself in the marketplace as evidenced by B20's use in over 50 million road miles and broad use by EPACT covered fleets. A vibrant biodiesel industry can play a role helping ARB in meeting its air quality goals and stimulating economic development in both rural and urban California. However, the current requirements of the Diesel Retrofit Verification Procedure, and its tie-in with diesel emission control rules, are functionally precluding its use in any diesel engine now and well into the future. This is having a direct impact on biodiesel producers and marketers operating in California today. They are losing customers and those losses can be directly attributed to the compliance requirements of the various diesel emission control rules approved to date. Additionally, the industry is facing its most significant threat with the pending Public Fleet Rule. The compliance requirements in that rule are tied directly to the Diesel Retrofit Verification Procedure. Without modification to include biodiesel, the outcome of this rule will severely cripple the industry in California and have a significant ripple effect for the industry nationally.

Expanding the Level 1 PM reduction threshold could incorporate a number of viable alternative diesel fuel reduction strategies, including biodiesel. As well, integrating the verification procedure for alternative diesel fuel formulations into this program could provide quantification of emissions and meet a number of ARB's goals including:

- Equal or exceed PM reductions.
- Not increase NOx emissions.
- Utilize only CARB procedures to calculate PM reductions.
- Reduce the costs of compliance to fleets (and ultimately citizens).
- Provide collateral benefits including reducing California's dependence on foreign oil and other fossil fuels, reducing local global warming contributions, and stimulating California's burgeoning biodiesel production industry.

Our industry appreciates your consideration of our concerns and attention in this matter. It is our sincere desire to continue working with the ARB and play a contributing role in helping clean up California's air. Please do not hesitate to contact me or our industry should you have questions or need additional information.

Sincerely,
Scott Hughes
State Regulatory Affairs Manager
National Biodiesel Board
(636) 527-6161

CIOMA
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WSPA
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1415 L Street, Suite 600
Sacramento, CA 95814

January 30, 2004

Ms. Diane Johnston
General Counsel
California Air Resources Board
1001 I Street, RM 6-71A
Sacramento, California 95814

Subject: California Air Resources Control Board Retrospective Review of all Regulations Adopted, Amended or Repealed since January 6, 1999.

Dear Ms. Johnston:

On behalf of the Western States Petroleum Association (WSPA) and the California Independent Oil Marketers Association (CIOMA), we appreciate this opportunity to submit the following comments regarding the Retrospective review of regulations that have been either adopted, amended or repealed since January 6, 1999, as required by Executive Order S-2-03.

When the Enhanced Vapor Recovery (EVR) regulation was adopted in 2000, industry expressed many concerns with the technical requirements, implementation timelines and impacts that the regulation would impose on the gasoline station industry. Since that time, the industry has continued to comment on all aspects of the EVR program. Most recently, our comments have focused on the proposed EVR and On-Board Vapor Recovery (ORVR) implementation timelines, effectiveness and costs. We continue to have major concerns with these issues and we believe conducting a retrospective analysis provides CARB and the regulated industry an excellent opportunity to make necessary and appropriate revisions to the EVR program.

Recommendation:

WSPA and CIOMA have conducted our own joint Retrospective analysis, which included a review of the following issues:

1) The current EVR certification program,

2) Updated cost effectiveness information,

3) The December, 2002 CARB Board adoption resolution; and,

4) Recent API ORVR compatibility study information.

Based on this analysis, we are formally requesting CARB align the ORVR deadline date with the EVR timeline.

WSPA/CIOMA Retrospective Analysis

1. Enhanced Vapor Recovery (EVR) Program:

EVR Requirements:

CARB adopted regulations in 2000 that require Phase I and II gasoline service station vapor recovery equipment meet more stringent vapor recovery and operating standards and be EVR certified. The EVR regulation establishes several implementation timeframes ranging from 2003 through 2008, by which EVR certified equipment must be installed. Although other Phase I systems have since been EVR certified, it should be noted that for over a year, there was only one certified system available. Additionally, numerous problems have been encountered in the many attempts to successfully certify a Phase II vapor recovery system. In fact, no Phase II system has yet fully passed the EVR testing requirements and been certified. Consequently, CARB has had to adjust the Phase II implementation dates accordingly, and it appears they will have to move the Phase II deadline date again to October 2004.

ORVR Requirements:

Separate from the EVR implementation requirements, CARB also is mandating all gasoline service stations meet a separate deadline of April 1, 2005 to comply with ORVR requirements. Under this mandate, service station operators that operate vacuum-assisted vapor recovery systems will be required to either convert their current equipment to a balance vapor recovery system or replace it entirely with systems that currently meet the ORVR mandate by April 1, 2005. However, the systems that are currently ORVR certified are not EVR Phase II certified. The end result is that a vapor recovery system may be installed that is ORVR compatible to meet the April 1, 2005 deadline, and then may have to be replaced again by April, 2008, if it does not pass the Phase II certification.

ORVR – Retrospective Review: Cost Effectiveness Analysis:

CARB's cost-effectiveness analysis for Module 3 (ORVR compatibility) was based upon the assumption that Phase II systems that were otherwise EVR-compliant (i.e., meeting Module 2 of the EVR program) would be in place. As a result, the nozzle prices in CARB's calculations reflect only the incremental cost of an ORVR compatible nozzle over a Phase II certified nozzle, instead of the upgrade/replacement cost of an entirely new system. This resulted in a significantly underestimated cost per ton of emissions reduction for Module 3.

In addition, this situation sets up a high likelihood that many service stations will have to go through a dual upgrade path. First meeting the ORVR deadline, and then making further (and as of yet undetermined) equipment replacements to meet the EVR Phase II system requirements. This places a significant economic burden on all station owners.

If Phase II systems are required to be converted to be ORVR compatible at this stage (prior to the availability of an EVR certified Phase II system), the cost per ton of emissions reduced will be extremely high for most stations. Enclosed with this letter are cost spreadsheets prepared by

Sonoma Technology, Inc. (STI) which present costs substantiated by WSPA members and GDF maintenance vendors.

In addition to correcting CARB's assumptions regarding the number of dispensing nozzles per station (as we discussed with CARB staff on January 20, 2004), it was determined that nozzle costs and dispenser-related costs are significantly higher than previously estimated, particularly for 6-pack dispensers which need to be converted to unihose dispensers. For most of the 6-pack systems currently in place, the conversion will essentially require significant additional expenditures that may include a complete replacement of the dispenser. In addition, permitting and engineering expenses are also real costs that need to be paid by the affected sources. When an EVR certified Phase II system becomes available, a second set of significant additional expenditures will be necessary. These additional costs are not included in STI's spreadsheets.

Our retrospective cost effectiveness analysis clearly demonstrates that CARB's estimated costs for retrofitting gasoline service stations to comply with the ORVR requirement were significantly underestimated. For example, Table 1 summarizes the cost-effectiveness data for the GDF3 size category (this is the size category that ARB estimates dispenses the largest volume of gasoline). As described in the attached memo from Sonoma Technology, the estimated costs are considered conservative, insofar as they do not include costs which may be incurred as a result of the changeover, such as the replacement of shallow drip pans, point-of-sale electronics, etc. For all cases, except the one involving existing unihose Gilbarco dispensers (which have been estimated as being on the order of 15% of the Gilbarco dispensers in the greater Bay Area) being converted to balance systems, the cost per pound of emissions reduced ($/lb) is well in excess of other recent ARB regulations (i.e., between $3/lb and $6/lb).

Table 1. Cost-Effectiveness of ORVR Compatibility Modifications for GDF3 stations: Comparison of previous ARB estimates (based upon making a "Module 2" EVR system ORVR compatible) to current estimates of modifying various types of non-EVR equipment.

Existing VRS Type	ARB Cost Effectiveness (CE) Number [a]	Sonoma Technology Cost Effectiveness Review [b]
Gilbarco Unihose	$2.20/lb	$5.08-$12.38/lb
Gilbarco 6-pack, Advantage system		$9.17-$21.98/lb
Gilbarco 6-pack, MPD3		$36.94-$40.16/lb
Wayne [c]		$68-$327/lb

[a] CARB, "EVR cost-effectiveness spreadsheet as of October 16, 2002," cost-effectiveness data for Module 3 (ORVR compatibility), GDF3 station size.

[b] From Sonoma Technology, Inc., spreadsheets included with this letter.

[c] High cost per pound for the Wayne system is largely due to the small emission reduction benefits.

ORVR – Retrospective Review: CARB Phase II Assessment and ORVR Timeline, Board Adopting Resolution (December 12, 2002):

On August 1, 2003, WSPA/CIOMA submitted comments on CARB's Second Notice of Public Availability of Modified Text, Enhanced Vapor Recovery Technology Review and Amendments to the Vapor Recovery Certification and Test Procedures for Gasoline Marketing Operations at Service Station. In our letters we brought to CARB's attention that at its December 12, 2002 Board Hearing, the Board formally adopted Board Resolution 02-35, which contained specific language directing staff to assess, following the initial certification of the first EVR Phase II system, whether there is adequate lead time to install complying certified EVR Phase II systems prior to the April 1, 2005 deadline for complying with ORVR requirements.

Specifically, the CARB adopted Resolution stated the following:

> "It is the intent of the Board that the assessment determine the adequacy of lead time in order to minimize the necessity that existing gasoline dispensing facilities (service stations or GDFs) will need to upgrade vapor recovery systems or equipment more than once in order to comply with both the EVR Phase II standards and specifications of ORVR. The Executive Officer and Board staff are directed to consult with the Districts, WSPA and other stakeholders in preparing the assessment and to report the findings to the Board within three months of the initial certification of the first EVR Phase II system".

To date, no Phase II system has successfully been certified. In fact, it appears that CARB will have to yet once again move the Phase II EVR implementation deadline. CARB's delay of the Phase II implementation deadline date directly affected the Board Resolution's intent and the ability for operators to avoid having to retrofit more than once to meet ORVR and EVR requirements.

Given the fact that CARB has stated they will have to move the Phase II Operative date yet again (to October 2004), and considering a time period of 3 months for CARB staff to conduct its assessment as required by Board Resolution 02-35, operators will not have sufficient time to install the Phase II EVR Certified system at thousands of stations statewide prior to the April 1, 2005 deadline. We cannot envision any scenarios that would allow sufficient time (again assuming a Phase II system is certified and commercially available by October 2004) to install Phase II systems by the April 1, 2005 ORVR deadline date. Therefore, operators will have no choice but to retrofit once to meet the April 1, 2005 ORVR deadline and then a second time once a Phase II system is certified and becomes commercially available.

ORVR Incompatibility, Mini-Boot and A/L Adjustments:

In CARB's justification for the early implementation of the ORVR-compatible equipment, CARB referenced data from a 1999 CARB study that showed that significant emissions occur when currently installed vapor recovery systems (VRS) were to fuel ORVR-equipped vehicles. That 1999 study found that the VRS attempted to recover the same emissions as the ORVR canister on the vehicle and that, due to the physical properties of gasoline, additional emissions resulted. This phenomenon was coined "ORVR incompatibility" and CARB then required that ORVR-compatible equipment be installed to reduce these additional vapor emissions.

The American Petroleum Institute (API) commissioned two studies to better understand and quantify the emissions caused by "ORVR incompatibility." The studies examined the two VRS systems that CARB indicated were incompatible with ORVR vehicles.

The first study, a review of CARB's original justification documents, revealed that CARB had referenced the wrong data set for one VRS. API shared this information with CARB who then modified their calculations. The revised calculations show that the first VRS was responsible for only 4% of the emissions due to ORVR incompatibility, not the 31% of the emissions as stated by CARB. In other words, CARB's own data show that the emissions due to ORVR incompatibility for the first VRS are very small and bordered on being insignificant.

The second API study, just recently completed, examined the emissions due to the second "incompatible" VRS. The result of this study showed that if this VRS was modified, it would have the same level of incompatibility as CARB showed with the first VRS discussed above. That is, if relatively minor and inexpensive modifications are made to this second VRS, its emissions due to ORVR incompatibility become significantly reduced and approach, if not exceed, the performance of the first VRS. Thus the additional emissions that CARB expected from ORVR-Stage II incompatibility appear to be relatively insignificant.

The API studies show that the additional emissions that CARB originally used as justification for the ORVR mandate significantly overestimated the emissions expected from these two vapor recovery systems. Based on this new information, the early implementation of "ORVR compatible" equipment as specified in the ORVR mandate is not justified.

Based on the EVR and ORVR timelines, combined with the fact that CARB has yet to certify an EVR Phase II system, and the corrected cost effectiveness numbers that are significantly higher than CARB originally estimated, it is our recommendation that CARB align the ORVR dates with the Phase II Standards and Specifications.

2. EVR Program Module 6, In-Station Diagnostics (ISD):

In addition to reviewing Module 3 of the EVR program (ORVR compatibility), we request that ARB also conduct a retrospective review of Module 6 (In-Station Diagnostics, ISD). This is a costly program, with questionable emission reduction benefits. Additionally, we remain concerned that air districts will use ISD systems as an enforcement tool, rather then a device to alert an operator of a problem and whether necessary corrective action should be taken. The performance requirements of the ISD module do not require the ISD system to be accurate enough to effectively be used as a compliance tool (ie. The system could indicate non-compliance even when the system is operating within certification parameters).

We recommend CARB re-examine the emission and cost benefits associated with Module 6 and develop an ISD policy that is consistent with the goal of ISD, which is to evaluate the reliability and performance of EVR equipment and not to be used as an enforcement tool.

In closing, we again appreciate the opportunity to provide comments on CARB's Retrospective review as required by Executive Order S-2-03. While we understand that comments are due on January 30, 2004, please note that our respective organizations may be submitting additional comments in the future, on other issues we believe should considered for review under EO S-2-03.

Thank you.

Jay McKeeman
Executive Vice President
California Independent Oil Marketers Association

Joe Sparano
President
Western States Petroleum Association

cc: Dr. Alan Lloyd – CARB, Chairman
Ms. Kathleen Tschogl – CARB, Ombudsman
Mr. Bill Loscutoff – CARB

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MEMORANDUM

February 3, 2004

TO: Steve Arita, WSPA STI Ref. No. 903670

FROM: Todd Tamura

SUBJECT: Explanation of costs of converting existing VRSs to "ORVR-compatible" systems

Attached are spreadsheets that identify costs and cost-effectiveness for several scenarios of converting existing vapor recovery systems (VRSs) to "ORVR-compatible" systems. Currently, the only two systems that have been certified as ORVR-compatible are the Healy VRS and vapor balance (non-vacuum) VRSs. Although precise information about the distribution of existing VRS technology types is not available for the entire state, it was the opinion of WSPA members (as well as a service provider in Northern California) that most VRSs are of the "6-pack" Gilbarco MPD3 (non-"Advantage") type, and that conversion of these systems to "ORVR-compatible" systems would require replacement of the dispensers entirely. The associated cost-effectiveness—not including potential costs which may or may not be incurred as a result of dispenser replacement—ranged from $14/lb (for the largest stations) to $121/lb (for the smallest stations).

The overall costing methodology is the same as that utilized by the California Air Resources Board (ARB): it is assumed that essentially all vacuum-assisted VRSs can be modeled as Gilbarco VaporVacs or WayneVacs; it is assumed that essentially all costs are capital costs (i.e., any change in operating and maintenance costs is assumed to be negligible); the capital recovery factors are ARB's; and the emission factors used are ARB's. Although ARB did not estimate permitting costs, we have applied the lowest capital recovery factor (corresponding to a permit lifetime of ten years) to these costs. Note that both this lifetime and ARB's assumed dispenser lifetime (seven years) are conservative in this analysis, given the need to install EVR-certified equipment by 2008 may necessitate the replacement of the dispensers and/or repermitting in a shorter timeframe.

We noted that the number of nozzles and dispensers identified in ARB's earlier analysis appeared to be incorrect, and we found the source of this discrepancy. To determine the number of nozzles and dispensers, ARB divided gasoline dispensing facilities (GDFs) into five size categories, and assumed that the number of dispensers for each was the same as the number

identified by EPA's 1991 Stage II guidance (Table 1 is a reproduction of Table B-8 from that guidance). However, EPA defined the five size categories differently from ARB (EPA's model GDFs had lower throughputs), and the dispensers in that analysis were configured differently than now (each dispenser had only one to four nozzles). Current dispenser technology consists primarily of 6-pack dispensers—six nozzles per dispenser, three on each side—and "unihose" dispensers—two nozzles per dispenser, one on each side. Estimates of the current average number of dispensers and nozzles for each of the five size categories defined by ARB are shown in Table 2. Note that these numbers were estimated as "typical" for the indicated throughputs; although the largest size category is assigned six dispensers, several GDFs have eight dispensers or more.

Another difference between the costs shown here and the costs in Module 3 of ARB's EVR cost analysis (i.e., the module for ORVR compatibility) is that Module 3 costs assumed an incremental change to the Module 2 (EVR-compliant) system, consisting of the use of Healy nozzles instead of EVR nozzles (i.e., only the incremental cost associated with a Healy nozzle was included) and replacement of a flow controller. We collected data from various WSPA members (as well as a contractor) and found that retrofits to existing systems—particularly 6-pack systems—may involve considerably more costs. The primary cost drivers are the type of system currently in place (i.e., unihose or 6-pack) and the type of system that would need to be converted to (Healy or balance). It is our understanding that existing regulations would require the 6-pack systems be converted to unihose systems due to the replacement of VRS piping. For 6-pack Gilbarco VRSs equipped with "Advantage" systems and 6-pack Wayne VRSs equipped with "Vista" systems, kits are available for conversion to unihose; however, other 6-pack dispensers (Gilbarco MPD3, Wayne non-Vista) are not convertible to unihose. Wayne non-Vista systems can be converted to Vista systems, but MPD3 systems would have to be completely replaced. At ARB's request, we have estimated the hypothetical cost of converting 6-pack systems to ORVR-compatible 6-pack systems, even though current regulations do not allow such conversion.

There was some variation in the confidential data received from WSPA members, partly due to differences in the degree of sophistication in dispensers and the extent of volume discounts, and partly because some conversions may require additional work. For example, in some areas, modifications of 6-pack dispensers will necessitate the replacement of shallow ("Bravo") under-dispenser containments (UDCs) with deeper ones, at an estimated cost of $5,000 per dispenser (including demolition, materials, and installation labor). In some cases, modifications may require that the Point-Of-Sale (POS) system be changed. Costs associated with additional work were specifically excluded from the spreadsheets, in part because reliable data were not available regarding the extent to which additional work would be needed at stations. With respect to variations in specific items such as dispenser cost, we have identified an approximate "mid-range" cost based on the data received.

Please contact me at (707) 665-9900 if you have any questions or comments regarding these spreadsheets.

		Number of Components in Model GDF							
Starting Gilbarco GDF type		Unihose		6-pack					
						Advantage		non-Advantage	
Ending GDF type		Unihose, Balance	Unihose, Healy	6-pack, Balance[a]	6-pack, Healy[a]	Unihose, Balance	Unihose, Healy	Unihose, Balance	Unihose, Healy
Module 3 (ORVR Compatibility)									
Components									
Nozzle and hanging hardware(balance system)	$200	4		12		4		4	
Nozzle and hanging hardware (Healy system)[b]	$450		4		12		4		4
Dispenser conversion kit to unihose for Advantage systems	$1,300					2	2		
Dispenser mods - Healy pump, etc.	$1,500		2		2		2		2
Vapor Ready Unihose Dispenser (incl associated electronics)	$7,500								2
Balance Unihose Dispenser (incl associated electronics)	$9,000							2	
Installation Costs									
Permitting (minor - no dispenser replacement)	$1,500	1	1	1	1	1	1		
Permitting (major - dispenser replacement)	$5,000							1	1
Nozzle and hanging hardware (per dispenser)	$400	2	2	2	2	2	2	2	2
Dispenser conversion kit to unihose for Advantage systems	$200					2	2		
Healy dispenser-related equipment	$200		2		2		2		2
New dispenser installation (incl. removal of old)	$2,000							2	2
Module 3 -- Total Fixed Costs (Equipment Purchase + Installation)		$3,100	$7,500	$4,700	$11,100	$6,100	$10,500	$28,600	$30,000
Module 3 -- Total Fixed Costs (Permitting)		$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$5,000	$5,000
Module 3 -- Total Fixed Costs (Nozzles)		$1,600	$2,600	$3,200	$6,200	$1,600	$2,600	$1,600	$2,600
Module 3 -- Total Fixed Costs (Dispensers)		$0	$3,400	$0	$3,400	$3,000	$6,400	$22,000	$22,400
Module 3 -- Annualized Costs = Fixed Costs (Permitting) x CRF1		$244	$244	$244	$244	$244	$244	$814	$814
Module 3 -- Annualized Costs = Fixed Costs (Nozzles) x CRF3		$643	$1,045	$1,287	$2,493	$643	$1,045	$643	$1,045
Module 3 -- Annualized Costs = Fixed Costs (Dispensers) x CRF2		$0	$698	$0	$698	$616	$1,315	$4,519	$4,601
Module 3 -- Total Annualized Costs (All Equipment)		$888	$1,988	$1,531	$3,436	$1,504	$2,604	$5,976	$6,460
ARB estimate of tons/yr reduced in 2005[c]		0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03
Cost-effectiveness ($/ton)		$33,367	$74,741	$57,555	$129,166	$56,534	$97,908	$224,676	$242,883
Cost-effectiveness ($/lb)		$16.68	$37.37	$28.78	$64.58	$28.27	$48.95	$112.34	$121.44

Notes

Cost Recovery Factor CRF1 (10% discount, 10 yr. life) -- Permitting	0.1627
Cost Recovery Factor CRF2 (10% discount, 7 yr. life) -- Dispensers	0.2054
Cost Recovery Factor CRF3 (10% discount, 3 yr. life) -- Nozzles	0.4021

[a]Not an option that is currently legal (because over 50% of internal piping would need to be replaced, system is required to be converted to unihose).

[b]Nozzle, whip hose, breakaway, primary hose

[c]Assumes ARB estimate of 0.335 lb/1000 gal of excess emissions * 13,233 gal/mo * 12 months)

Securing the Industry's Future Since 1894

CTFA
Cosmetic, Toiletry, and Fragrance Association

E. Edward Kavanaugh
President

via email to regreview@arb.ca.gov

January 30, 2004

Ms. Diane Johnston
General Counsel
California Air Resources Board
1001 "I" Street
Post Office Box 2815
Sacramento, California 95812

Dear Ms. Johnston:

In response to Executive Order 2-2-03, The Cosmetic, Toiletry, and Fragrance Association (hereafter "CTFA") submits the following comments regarding certain regulations adopted, amended or repealed by the Air Resources Board ("ARB") since January 5, 1999. We discuss not only specific regulations, but the trends they represent for the future of the ARB's efforts to regulate emissions from consumer products.

CTFA is the national trade association representing the personal care product industry. Our almost 600 members are involved in every aspect of the manufacture and distribution of the vast majority of cosmetics, toiletries and fragrances marketed throughout California. Most of those companies also market their products nationally and worldwide. In a global marketplace, the ability to market products throughout the world that are uniform in formulation and labeling is a key to efficiency, maintaining low prices for consumers. Uniform products which also bolster brand identity and consumer confidence in products that are important to their health and well-being.

Impact on California Consumers and Businesses

Our members have a longstanding connection to the state of California which represents a very significant portion of their business. Many companies are based in California, while many others maintain manufacturing and distribution facilities in the state. Several of our member companies distribute through direct sales to consumers and market and sell their products through literally thousands of individual sales representatives who live in California. Two of the larger direct selling companies in the country are headquartered in California and maintain

separate distribution centers, research and development centers and other facilities employing hundreds of workers in the state.

Other CTFA members include the nation's two largest manufacturers of nail care products for salon use that are based in Southern California. California also serves as the base for many CTFA members that export and import personal care products to and from the Pacific Rim. Another important CTFA member based in Southern California is one of country's oldest and largest manufacturers and distributors of cosmetics sold through franchises in the state and nationally. Other CTFA members in California are small entrepreneurial businesses founded to serve the state's beauty and entertainment industry.

It is thus important to realize that difficulties in formulating safe and effective personal care products pose a very real threat to California citizens in two respects. It threatens the jobs of many California residents as well as limiting the array of safe and effective products available to California consumers.

General Overview

Many personal care products have been subject to reformulations required by the ARB's consumer product regulations adopted periodically since 1989. These products include hairsprays, a variety of other hair care products, antiperspirants, deodorants, nail polish removers, personal fragrance products, and shaving creams. Some of these products have been subject to multiple reformulations over this time.

CTFA welcomes the opportunity to outline our views on the ARB's ongoing efforts to regulate personal care products. The consumer product regulations that fall within the relatively narrow time frame of the Executive Order raise several broader issues that call into question not only the wisdom of some regulations already adopted, but also the trend of spending substantial resources to pursue increasingly limited reductions in volatile organic compounds from consumer products.

In essence, much has been accomplished[1], but there is little to be gained by continuing to spend scarce government resources to reduce the few remaining emission reductions that can be obtained while remaining in compliance with the requirements of the California Clean Air Act that such reductions be technologically and commercially feasible, and necessary.

[1] At the recent "SIP Summit", the ARB staff reported 130 tons per day of emission reductions from 83 categories of consumer products to date, amounting to a 50 percent reduction in the emissions from consumer products. We believe this is a significant achievement for both the ARB and the regulated industry. We also believe that it represents the vast majority of reductions that can be achieved from this source of emissions.

The regulations specifically subject to the Executive Order include two regulations related to testing methods (Item 7 and 15), the Consumer Product "Midterm Measures 2" Regulation (Item 13), and a regulation repealing a "technology forcing" measure – a zero percent VOC limit – for aerosol antiperspirants (Item 31) when it was discovered that such a limit was not feasible. We will focus our comments on the last two items.

Midterm Measures 2

"Midterm Measures 2" was the most recent major rulemaking completed for consumer products.[2] This required hair mousses to be reformulated from 16% VOC to 6% VOC, effective December 31, 2002 (the second reformulation); nail polish remover to be reformulated from 75% VOC to 0% VOC, effective December 31, 2004 (the third reformulation); and hair shine products to be reformulated for the first time to 55% VOC, effective January 1, 2005. The reformulation of hair shines to meet the impending deadline remains a difficult and expensive effort that is borne in significant part by small businesses that must absorb these costs or pass them on to their consumers.

"Midterm Measures 2" proved to be a very difficult effort to achieve any significant reductions, despite the good faith efforts of the ARB staff and the industry. Expectations of significant emission reductions had to be modified when confronted with the reality of the few reformulations that were possible while maintaining viable products for the consumer. This is clearly the harbinger of things to come if the ARB staff persists in overly-ambitious efforts to regulate these products.

Antiperspirant and Deodorant Regulation

The amendment to the Antiperspirant and Deodorant Regulation was urgently required to correct an earlier regulation that went too far. Previously, the ARB had adopted a requirement that aerosol antiperspirants reformulate to a 0% HVOC (propellant) standard. These products are over-the-counter (non-prescription) drugs regulated by the Food and Drug Administration and the California Department of Health Services – the only over-the-counter (OTC) drug regulated by the ARB to date. The industry found, and the ARB agreed, that this reformulation was not feasible when it was discovered that the only active ingredient allowed by FDA for an aerosol antiperspirant was incompatible with the only ingredient that would permit the attainment of a 0% HVOC limit.

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[2] The ARB staff is currently in the preliminary stages of a rule to be adopted by the Board by June 2004. This is planned to be the first of several rulemaking efforts for consumer products with additional regulations scheduled for adoption in 2005, 2006 and 2008 with all emission reductions to be realized by 2010.

While the ARB is to be commended for quick action to correct this error, the necessity to take this action illustrates the dangers in trying to push technology too far, too fast. In this case, in the search for meaningful reductions from consumer products, the ARB went back to one of the few significant sources of emissions one too many times. As often happens, technology that looks promising in theory proved unworkable in practice when the companies with expertise in formulating the product tried to comply with the regulation.

The regulation to modify the antiperspirant and deodorant regulation illustrates another very important point. The ARB should not attempt to regulate OTC drugs. The Food and Drug Administration adopts very specific and stringent regulations that govern the formulation of OTC drugs. Such a product can only be marketed if it is the subject of an approved New Drug Application, is the subject of an FDA-approved "switch" from prescription to over-the-counter status, or complies with a FDA regulation (monograph) governing its specific class of drug (such as antiperspirants). In each case, FDA limits the active ingredients that can be used in such a product, and may place other limitations on the formulation of the product as necessary to ensure it is both safe and effective.

The ARB requires reformulations that are focused only on the reduction of emissions, and the agency does not have the expertise to determine whether those reformulations will adversely affect the efficacy or safety of the product. In its one effort to regulate an OTC drug – antiperspirants – the ARB has already encountered the worse case scenario. It ordered a reformulation that simply could not be accomplished within the formulation limits specified by the Food and Drug Administration. The Agency should not take this risk again.[3]

The VOC Fee

At this time, the Office of Administrative Law has regulations under consideration that will, for the first time, subject certain consumer product companies to fees based on their VOC emissions in California. This is based on a law authorizing these fees that was signed into law by former Governor Gray Davis on March 18, 2003.

While we believe the law and regulation to be ill-considered and flawed in many respects which we have argued in other forums, we believe it is relevant to this discussion because it illustrates the extraordinary lengths to which the ARB must go to support a huge infrastructure to regulate consumer products and precisely

[3] The ARB is currently specifically considering regulation of Topical Antifungal Drugs, and definitional changes currently under consideration for the ARB consumer product regulations may result in regulation of other OTC drugs such as combination sunscreen/insect repellant products, antimicrobial drug products and possibly others. These products are minor sources of emissions and should not be regulated.

the time when that effort can no longer expect to achieve significant emission reductions.

In justifying the VOC fee on consumer products, the ARB staff argued that 67 staff members were necessary to develop, implement and enforce the consumer product regulations. We find that number extraordinary in light of the fact that the ARB staff is chasing a shrinking pool of emissions, and in light of the fact that most such products cannot be reformulated in a way that is technologically and commercially feasible. The recently announced draft consumer product regulations seek to obtain minimal emissions reductions from certain product categories. Examples are temporary color (0.036 tons or 72 pounds per day), feminine personal hygiene products (0.109 tons or 218 pounds per day), and topical antifungal products (0.235 tons or 470 pounds per day). With a state the size of California, it is questionable whether such reductions are even measurable. Small reformulations are not easier or less expensive than large ones, particularly when the product is a drug (topical antifungal products). These proposals and others with minimal reductions are simply not justified.

According to the ARB staff, approximately 70 categories were considered with VOC emissions between 0.1 and 1.0 tons per day. We respectfully submit that this level of effort to regulate consumer products no longer makes sense, and that substantial portions of these resources should be shifted to other efforts where more meaningful emission reductions can be achieved.

Future Regulations

We believe this discussion leads compellingly to the need for the ARB to seriously reevaluate its efforts to regulate consumer products. The regulations under consideration by virtue of the Executive Order illustrate that the substantial and very credible achievements of the ARB over the past 15 years are in danger of becoming a classic case of over-regulation and waste of scarce state resources.

While CTFA remains willing to work with the ARB staff to determine if there are any further steps that can be taken to obtain significant, feasible and cost-effective emission reductions from personal care products, we must also state our concern that these efforts – which consume substantial resources from both the government and the industry – have crossed the line from meaningful and beneficial to of minimal impact and potentially harmful to California consumers and businesses. Regulations that previously benefited the environment now pose a much greater possibility of simply degrading the quality of consumer products available to California consumers (or eliminating certain products altogether) with no commensurate benefit to the environment. Surely this is not the intended result.

Conclusion

We appreciate the opportunity to comment on these issues. If you need further information, please do not hesitate to contact us.

Respectfully submitted,

Thomas J. Donegan, Jr.
Vice President-Legal & General Counsel

cc: Peter D. Venturini, Chief, Stationary Source Division, ARB

CIOMA CALIFORNIA INDEPENDENT OIL MARKETERS ASSOCIATION
3831 North Freeway Blvd., Suite 130 • Sacramento, CA 95834-1928 • Tel. (916) 646-5999 • Fax (916) 646-5985

January 30, 2004

Ms. Diane Johnston, General Counsel
California Air Resources Board
1001 I Street, RM 6-71A
Sacramento, California 95814
regreview@arb.ca.gov

Subject: CARB regulations and their impact to CIOMA members.

Dear Ms. Johnston:

We wish to thank the Air Resources Board for the opportunity to comment on regulations which have had an adverse impact, or may have an adverse impact, on businesses in this state. Before getting into the specific regulatory programs we would like to comment on CARB's regulatory program in general. CARB has established a sophisticated regulatory development program. While we are at odds with you in many instances, we will exercise our continued involvement with regulations that directly (and indirectly) affect our members. As we have expressed recently, we are very concerned with the role that settlement agreements are playing in the accomplishment of public priorities. When settlement agreements are entered into there is a specific **exclusion** of interested and affected parties from both the negotiations leading to settlements, and their implementation. This practice raises serious legal, moral and due process issues and we urge the Board to resist this avenue. If agreements *are* pursued, then the inclusion of all parties potentially affected by the agreement(s) should be included in negotiation and implementation of the document(s). If not, then, as a prophylactic strategy, parties will be encouraged to initiate their own lawsuits to insure that their interests are being protected through separate agreements. This is a worse-case manner in which to accomplish effective public policy. We acknowledge the receipt of the recent letter from Executive Officer Witherspoon and will respond to it in a separate communication. We thank her for writing us about our concerns.

Now for our specific comments:

CARB Fuel Specification Regulations

CIOMA has had a long-standing interest in communicating our concerns on the development and implementation of state fuel specifications. As we have expressed frequently, and which is now backed by numerous public and private studies, California's high fuel prices are specifically driven by the supply isolation these requirements impose on our fuels. We are already physically isolated, but the implementation of unique fuel requirements has

exacerbated this condition into a situation where our fuel prices are the highest in the contiguous 48 states and are significantly more volatile. For the independent fuel marketer this poses a special economic threat. Large oil companies have the financial resources and market flexibility to weather these conditions. Indeed, the fuel suppliers in this state actually are advantaged by these conditions, as is witnessed by the higher-than-other-states refinery "crack spreads" (a measure of determining refinery profitability) California refiners enjoy. Small businesses, which comprise our membership, are much less able to withstand periodic market conditions where supply costs are greater than sales costs – termed "inversion" – which occur more frequently in these volatile conditions. Further, these conditions create difficult-to-predict market conditions which confound our members in obtaining needed loans to make frequent and expensive upgrades mandated by CARB and other California agencies. And these regulations, by tightening the overall supply of fuels in the state, have created especially volatile conditions in the unbranded market, as well as more frequent shortages, where most of our members obtain their primary supply.

The independent oil marketer provides a valuable component to the state fuels market. First, independent marketers provide convenience to California motorists. They operate and supply small independent stations that serve neighborhoods and rural areas, where larger firms will not operate due to low volume conditions. Further, our members serve small bulk purchasers such as local governments, school districts, emergency services, agriculture, construction sites and small fleets. Finally, our members generally participate at the lower end of the price spectrum, providing downward pressure on fuel costs and assuring choice by participating in toe-to-toe competition with the major oil companies. We fill important niches in the fuels market place, and without our participation, many fuel purchasers will have to create more expensive and more logistically complex fuel supply arrangements. The economic conditions created by California's unique fuel recipes create harm and significant impact to our members and their continued viability.

However, even with our continued good-faith input to CARB's regulatory process, the Board continues to conclude that there is "no impact" to small businesses from these regulations. We have a well-documented set of communications with CARB on this issue. Most recently we raised concerns early in the development of the Phase III gasoline regulations – at the earliest point during workshops – which have been continually ignored throughout the adoption and amendment of the Phase III regulations. We would be glad to share the full set of documents and chronology, but, in short, we have had 3 years of communication with CARB on this issue, carefully pointing out how the regulations had the potential to impact our members, and small businesses, to no avail. If CARB continues to ignore the economic impact on small businesses resulting from their regulations, as legally mandated, we will be forced to pursue this discussion in court.

Proposed solutions:

- ✓ Retain a consultant to develop model(s) that effectively predict the costs to small businesses from CARB regulations, especially noting the limitations created by having to finance, on limited assets and incomes, the costs of proposed regulations. Further, other costs to businesses, such as insurance, other mandated expenses (such as enhanced vapor recovery, underground storage tanks upgrades, etc) and the like should be included to determine if small businesses can afford, or qualify for financing, the regulation at hand.
- ✓ Develop the ability to quantify both direct and indirect costs of regulations. For example, the cost of fuel to a marketer will not only be influenced by possible increases in manufacturing, it will also be affected by the strains the regulations put on the overall supply system. Increased costs in fuel supplies, such as these, need to be taken into account.
- ✓ Respond in good faith to concerns raised by affected parties during the course of regulation comment and consideration.

CARB Enhanced Vapor Recovery Regulations

We have provided a jointly developed comment on a portion of the Enhanced Vapor Recovery (EVR) regulatory package with the Western States Petroleum Association, - that letter is being delivered under separate cover. It addresses a critical issue regarding the timing of various regulations in this complex package, and a proposed solution to the ORVR/EVR requirements as they currently stand.

Beyond the comments included in that letter we have the following comments on the overall EVR package. First, as we have commented previously in adoption proceedings and public comment opportunities, we believe CARB has not sufficiently addressed the issues of cost to small businesses in the economic analysis of the requirements. Small businesses have unique and difficult hurdles in attempting to comply with CARB requirements, especially significantly expensive EVR mandates. The federal Small Business Administration has documented that small businesses face financial burdens 60% higher than larger firms in achieving compliance with environmental regulations. For example, small businesses do not have large quantities of ready capital available to pay for expensive improvements. So, they have to obtain financing to accomplish these ends. First, the owner must be able to demonstrate the ability to repay the loan based upon income and liabilities. Obviously an independent operator does not have the asset base of a major oil company. And, as has been the recent experience of service station owners, these expensive requirements come along at disturbingly frequent intervals, in many cases more frequent than the normal operating life of equipment or supporting infrastructure.

A particularly difficult problem the small owner has is that the station is likely a smaller volume location (the major oil companies have "cherry-picked" the prime locations and govern competition through branded supply contracts) so it is more difficult to establish

adequate financial basis to obtain loans. Second, independent operators do not have the ability to purchase in volume, as do the major oil companies, so their unit price for equipment and services is higher. Finally, every day of non-operation creates a more significant impact to the independent operator due to the lack of reserve capital.

Another area of concern is that financial impact analysis is never updated. Specifically, with the EVR regulations, there have been amendment opportunities to re-evaluate the original cost estimates are recalculate them based upon more current information. A growing concern we have is that as companies continue to struggle with certification of a Phase II system the R&D costs are dramatically increasing. This will lead to higher priced systems than originally projected. Inflationary impacts on equipment and services must also be considered. CARB should schedule regular updates to its original costs estimates so that the real costs of implementation are identified, and if costs become significantly greater than originally anticipated, a hearing should be scheduled to re-examine the requirements and their cost-benefit.

CARB financial impact analysis has not taken into account these various problems. The analysis is usually based on very preliminary cost estimates. And then the costs are evenly spread over the population of service stations, without weighting for "ability to pay." This provides a distorted and unrealistic view of economic impact and provides decision makers with inaccurate information. CARB is obligated, by law, to specifically evaluate the impact to small businesses. This has not been done in an accurate manner. And, although staff at times asks us to provide them with this analysis, it is an expensive undertaking that our small number of members and limited resources cannot provide. After all, it is CARB's obligation to perform this analysis, not ours. And our members are the ones being burdened with the cost of the regulation results. Clearly the moral, legal and financial obligation is the proposing agency's.

Another issue we have communicated to CARB and others is the potential situation of having sole-source vendors approved for equipment and systems. We believe that at least three vendors should be certified for equipment and systems to assure adequate competition for required materials. We suggest that CARB examine the recent problems station owners have had with "enhanced leak detection" testing, where only one certified testing company exists, and there have been order-of-magnitude price jumps on the testing costs, as a good example of how sole-source provision can lead to serious problems.

Proposed Solutions

- ✓ As suggested in the previous item, CARB should retain a consultant to develop economic impact models on small businesses.
- ✓ CARB should regularly update their economic impact analyses to determine whether original estimates are correct, and identify thresholds of increase that would trigger new hearings if costs were escalating significantly.

- ✓ CARB should adopt a policy that at least three vendors/suppliers be certified before requirement timelines are established.

CARB Enhanced Vapor Recovery Regulations on Aboveground Storage Tanks

This is a regulation package currently under development. Since we have not seen the final requirements, nor final cost information, we cannot make definitive comments on costs or potential impacts to our members or their customers. However, our involvement so far has led us to some preliminary conclusions. First, it appears that staff is spending a significant amount of time in designing a very complex and costly set of requirements, akin to the EVR requirements for service stations. And, this complex construct is being applied to the entire universe of aboveground storage tanks, for large commercial and fleet tanks to small, remotely located farm tanks. There appears to be a fixation with a "Cadillac" solution regardless of cost, practicability or need.

From our preliminary assessment it looks like there are two primary sources of fugitive emissions from AST's – faulty pressure relief valves and faulty or cracked fuel content gauges. There may be a very cost-effective way to eliminate a substantial portion of the emissions by requiring retrofit of these elements and simple annual maintenance requirements, rather than having to put in entire new systems. But we continue to review intricate mechanical information on insulated tanks, complex vapor recovery systems and support equipment. And, to our knowledge, there is no system that meets the proposed requirements currently in use.

This brings another issue into play. The retrofit program for AST's is very different that that for service stations. Retrofit of service stations with vapor recovery equipment occurred over a long period of time. The AST program will require retrofit of all tanks (depending on APCD application of the rules) at one time. This could create significant equipment supply and servicing issues for the regulated community. Further, these new, experimental systems could easily run into certification problems similar to the service station EVR program. By requiring new, untested and increasingly complex requirements CARB is adding delay and uncertainty to emission controls. Further it places the person paying for and employing the new technology in a high liability position.

This occurs in two ways. First, the owner/operator becomes the "lab rat" for the new equipment. Although certified by CARB, the owner/operator is responsible for *utilizing* the new systems or equipment. If equipment fails, if systems don't operate as predicted, or if false readings are generated, the owner/operator must bear the cost for fixing the problem. CARB staff frequently asserts that the owner/operator should make the installers and manufactures provide warranties or other obligations to fix the problems. This is fallacious - it is like a customer telling Bill Gates that Windows should be responsible for work losses related to computer software glitches. The bottom line is that our members are held

ultimately responsible for the field testing and eventual finalization of equipment and system designs. (We refrain, here, from discussing the fact that CARB adopted flawed certification of the previous vapor recovery equipment absent *any* liability.)

Second, the owner/operator is held liable for air quality violations while field testing the equipment. So, to add insult to injury, the owner/operator is provided the "opportunity" to pay for equipment repairs and to argue over, and in many cases pay, fines for equipment or system malfunction. There is a serious equity issue here, as well as an important economic consideration.

Proposed Solutions:

- ✓ Direct staff to prepare "stair-step" proposals to emission controls rather than take-it-or-leave-it packages. This would provide decision makers the ability to evaluate various compliance scenarios and their respective costs and emission reduction capabilities without having to send staff back for complete redesign of regulatory initiatives. It also provides more flexibility in establishing requirements based upon ability to pay.
- ✓ Require staff to provide at least one workshop, prior to "closing" the final regulatory package – one that fully discloses to the regulated community and other parties the estimated costs, economic impacts and emission controls achieved. In the current situation the public's only opportunity to fully comprehend what staff ultimately recommends is during the final 45-day review period. These documents can entail months, or years, of staff work that must be digested by reviewers in significantly less time than it took to prepare. And, reviewers are compelled not only to digest the information, but comment on it and engage in communications with staff, Board members and others during this compressed timeframe.
- ✓ Provide economic assistance, especially to small businesses, to subsidize the costs of "burning-in" systems and equipment. CARB may come to a significantly different realization of what they are requiring if they have to allocate budget to helping implement their requirements. And this may be the only way small businesses can afford increasingly expensive and complex mandates.
- ✓ Provide emission violation amnesty during "burn-in" periods. We understand that this requires cooperation of the local districts, but in the final analysis businesses that are assisting in achieving reliable emission control equipment/systems should NOT be held liable for failures beyond their control.

<u>CARB Consideration of Regulation on Cargo Tank Trucks and Fuel Delivery Practices</u>

This is another regulatory package under development, although not as far along as the AST/EVR program. Since this program is still in the information-gathering stages there is not much specific to comment upon, but we do have some general observations. First, we have not yet commented on the value of the Ombudsperson Office in negotiating the myriad

avenues of CARB regulatory initiatives. Kathleen Tschogl and her staff provide a critical and essential role in helping the regulated community understand what is being proposed, and in facilitating communications between staff, CARB leadership and those who are going to have to pay for compliance. This is truly a "feather" in CARB's cap - providing resources to those who do not have staff resources dedicated, day-in and day-out to the limited aspect of air quality requirements (in relation to the overall responsibilities of keeping a business profitable, employees paid, and benefits provided). We urge CARB to maintain this office and their role in helping us provide useful, timely information and participation.

Second, we urge the Board to truly "partner" with the regulated community in developing practical and cost-effective regulations. Here is a quandary we have run into. CARB asks us as an association, and our members individually, to participate in data gathering exercises. Staff indicates that without adequate information invalid emission estimates will occur, with the possibility of emission over-statement (leading to more severe requirements). This is a valid point. However, from the regulated vantage, there are some immediate reactions to these data-gathering exercises: 1) How much rope do I give a regulatory agency to hang me with?; 2) How much time and expense is involved in providing this information, in relation to the other pressing needs of my business?; 3) Will this information, many times proprietary, be kept secured and unavailable to anyone but CARB staff working on this issue?; and 4) Will the information be used in models or other estimating calculations that are not suitably designed to provide accurate outputs? With these questions in mind, there is a strong hesitancy to incur the costs and inconvenience of gathering and submitting the data. When these issues are added onto a history of CARB generating expensive and cumbersome regulatory requirements, it is very understandable that the regulated community is hesitant to cooperate in these situations. Thus, the need to truly partner with the regulated community in regulation development.

We have experienced some encouraging signs from CARB staff in regulatory development programs – and the way the cargo tank program is beginning gives us hope. There have been early meetings and full disclosure of the potential path for regulation development, as well as participation in emission estimate workplan development. This is a good starting point. However, to achieve a true *partnership* with the regulated community there needs to be a buy-in to the final regulatory proposals. Some level of agreement among work group participants needs to be reached in the proposal to be submitted to the Board. If, after extended participation in meetings, data provision and workshops, the staff and/or executive branch come up with proposals that meet the strenuous objection of process participants, the question legitimately posed is, "Why have I wasted all this time and effort to have someone ignore my concerns?"

Therefore we urge the Board and staff to develop, as much as possible, consensus in moving forward with recommendations on regulatory proposals. This is a new model, at least from our perspective. It will lead to greater cooperation, and trust, from the regulated community

and will provide dividends through a greater willingness to comply. The opposite is true if regulations keep getting rammed down our throats.

Proposed Solutions:

- ✓ Retain the Ombudsperson Office as a valuable and essential asset in the CARB regulatory process.
- ✓ Strive to achieve consensus with the regulated community for recommendations to the Board, especially when the regulated community is expected to put "sweat equity" into the development of the proposals.

CARB Consideration of Retrofit Requirements to Fuel Delivery Truck Engines

We believe this regulatory endeavor has been temporarily shelved by CARB. In many ways the previous discussion on cargo tank regulations is relevant to our involvement with this initiative. Our involvement with staff was positive and constructive, until a proposal that was developed in a consensus manner was brought back with changes from the administrative branch. At that time it appeared that an unreasonably short time frame was proposed, to the distress of working group participants.

This program contained a reliance on new, untested technology with fuel delivery truck owners and operators having to employ technology in early stages of development. High costs and unanswered questions regarding liability, operating durability, and deployment prior to common availability of ultra low sulfur diesel were legitimate concerns expressed by the regulated community. As has been stated previously, this type of regulatory outcome poses unique and negative impacts to our members. Those impacts must be adequately identified, and hopefully mitigated through careful construct of the requirements.

A particular concern with this proposal is that it is listed in a settlement agreement. Although we have heard that there are attempts in working with agreement parties in removing this requirement we have not been asked to participate in discussions about that effort. Since this program materially affects our members we ask to be included in those discussions.

Proposed Solutions:

- ✓ Careful design of requirements to insure they are employed using reliable and well-tested technology, with minimal liability to the person employing it.
- ✓ Inclusion of parties directly affected by settlement agreement conditions.

Conclusion

After participating in the January "SIP Summit" it is clear that the state has a daunting task of reducing emissions to comply with SIP commitments. We are now encountering the law of diminishing returns, where additional emission controls are becoming increasingly expensive

and difficult to attain. The Board must perform the difficult task of balancing air quality improvement needs with the potential economic harm those requirements impose. Especially vulnerable to this situation are small businesses. It is important to remember that small businesses provide essential employment and benefits to their localities. Health effect benefits from air emission reductions should be tempered with potential loss of employment and health coverage for the state's population, as small businesses are adversely affected by regulatory mandates. We thank you for this opportunity to express our views.

Sincerely,

Jay McKeeman
Executive Vice President

Cc: All Members of the Air Resources Board
Deputy Cabinet Secretary Dan Skopec, Governor's Office
Cal/EPA Secretary Terry Tamminen
Executive Officer Catherine Witherspoon, CARB
Kathleen Tschogl – CARB, Ombudsperson

Engine Manufacturers Association
www.enginemanufacturers.org

Two North LaSalle Street
Suite 2200
Chicago, Illinois 60602
Tel: 312/827-8700
Fax: 312/827-8737

January 30, 2004

By E-Mail (regreview@arb.ca.gov)

Diana Moritz Johnston
General Counsel
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: EMA'S Comments on the Retrospective Review of CARB Administrative Regulations per Executive Order S-2-03

Dear Diane:

The Engine Manufacturers Association ("EMA") hereby submits its response to the CARB's request for public comments on the "Retrospective Review of CARB Administrative Regulations Per Executive Order S-2-03." Specifically, EMA requests that CARB include in that mandated retrospective review (which is to assess economic impacts, legal authority and other key criteria) the "Risk Reduction Plan to Reduce Particulate Matter Emissions From Diesel-Fueled Engines and Vehicles," which was adopted by CARB on September 28, 2000. Similarly, EMA also requests that CARB's retrospective review include the "Regulatory Amendment Identifying Particulate Emissions From Diesel-Fueled Engines as a Toxic Air Contaminant," which amendment was approved by the California Office of Administrative Law on July 21, 1999.

Thank you for your attention to EMA's comments on this matter, and please do not hesitate to contact me if you have any questions regarding EMA's requests.

Very truly yours,

Timothy A. French

vm

Subject: FW: Executive Order S-2-03
Resent-From: regreview@arb.ca.gov
Date: Fri, 30 Jan 2004 17:27:46 -0800
From: "Darrel Dietz" <ddietz@beallcorp.com>
To: <regreview@arb.ca.gov>
CC: <ktschogl@arb.ca.gov>

> -----Original Message-----
> From: Darrel Dietz
> Sent: Friday, January 30, 2004 5:17 PM
> To: 'regreview@arb.ca.gov'
> Cc: 'ktschogl@arb.ca.gov'
> Subject: FW: Executive Order S-2-03
>
>
>
> -----Original Message-----
> From: Darrel Dietz
> Sent: Friday, January 30, 2004 5:08 PM
> To: 'regreview@arb.ca.gov'
> Subject: Executive Order S-2-03
>
> Dear Ms. Diane Johnston / General Council
>
> I feel that my following issues affect all the criteria you have outlined:
> 1. The impact of each rule on California businesses;
> 2. The authority for the adopted, amended or repealed regulations; and
> 3. Conformity with statutory criteria for necessity, authority, clarity, consistency, reference and nonduplication.
>
> I am concerned that the ARB is not following legal protocol as outlined in their own Public Participation Guide to Air Quality Decision Making in California Handbook. (Copies attached).
> I am also concerned that the information submitted by the board to the Office of Adminstative Law has a history of being incomplete, incorrect and intentionally censored and manipulated to be self-serving with complete disregard to public input and participation.
> Some of the tactics we have observed include:
>
> 1. Holding meetings without inviting anyone.
> 2. Announcing meetings one or two days' prior.
> 3.Refusing to take minutes at public workshops, i.e. "We didn't receive any comments" because we didn't take any.
> 4. Refusing to provide public information.
> 5. Refusing to validfy emissions calculations. Submitting emission claims known to be flawed or fabricated.
> 6. Intentionally excluding government agencies from emission calculation such as Airports, Landfills, Military bases etc.
> 7. Continue to fined for mechanical failure.
> 8. Refusing to validify accuracy of test procedures used in enforcement to levy fines.
> 9. Using test methods not consistaent with State fire Marshall, cHP commissioner as required.
> 10. Holding meetings with no agenda posted. How would people know if the meetins were addressing issues pertinent to their concerns or prepare for them?
> 11. Continued intimidating attitude that they do not have to respond to participants in public meetings and workshops.
> 12. Refusing to outline our right of Due Process and excluding us from local Judicial resolve.
>

> *These are just a few of the frustrations we encounter dealing with these "Public Servants" who seem to have the attitude they are not accountable to the public and show disregard for people who do take the time to travel and attend meetings.*
> *The following attachments are a few examples to validify my concerns.*
> *If you have any questions or concerns regarding this letter please do not hesitat to contact me to arrange a meeting.*
>
> *Sincerely,*
>
> *Darrel Dietz*
> > *<<image.tif>>* > > *<<image001.tif>>* > > *<<image002.tif>>* > > *<<image003.tif>>*
[Darrel Dietz] our attachments are not all going through. Please respond with a mailing address.
>
>

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image001.tif	**Name:** image001.tif **Type:** TIFF Image (image/tiff) **Encoding:** base64 **Description:** image001.tif

image002.tif	**Name:** image002.tif **Type:** TIFF Image (image/tiff) **Encoding:** base64 **Description:** image002.tif

image003.tif	**Name:** image003.tif **Type:** TIFF Image (image/tiff) **Encoding:** base64 **Description:** image003.tif

Let's Clear the Air

A Public Participation Guide to Air Quality Decision Making in California

California Environmental Protection Agency
Air Resources Board

Public notification and mailing lists

When the ARB is proposing to adopt a regulation, you can get detailed information on the proposal to help you participate in the decision-making process. During the public comment period, the proposed regulation and the staff report are available at the ARB's Public Information Office and copies of the draft regulation are mailed to people who have requested a copy of the regulation.

If you are on the public hearing mailing list, you will receive notices for ARB public meetings. Notices are also posted on the ARB web site. For the ARB, State law requires that there be at least a 45-day public comment period. If you need additional time to prepare comments, you can request that ARB extend the public comment period.

Public hearings

At the public hearing, the Board discusses the proposed regulation, the written comments received during the public comment period, and additional comments that the public makes at the hearing. Public comments, presented at workshops or in writing after the release of the staff report, are also discussed before the Board at a formal hearing. The Board, therefore, has knowledge of the concerns expressed during the development of the regulation both prior to and after the release of the staff report. In addition, the Board also receives oral testimony at the hearing before taking action on the proposed regulation. All public testimony is recorded in official transcripts that are later posted on the ARB web site. All testimony, written or oral, during the formal comment period and the public hearing is entered into the public record.

Get on appropriate mailing lists and attend meetings that the ARB and local air districts conduct.

The Board chairperson will ask for oral comments, in the form of public testimony, from anyone who is interested in speaking. If you wish to speak, you will be asked to fill out a public comment card. The Board members may ask questions and may make changes to what the staff is proposing on the basis of the information received during the public comment period and at the hearing.

If the Board adopts the proposed regulation as recommended or with minor revisions, ARB staff prepares a regulatory Final Statement of Reasons (FSOR). The FSOR contains written

Table of Contents

Want more copies of this guide?

Contact the Air Resources Board Office of Public Information:

Phone: (916) 322-2990 or (800) 363-7664

E-mail: helpline@arb.ca.gov

Using this guide

A Public Participation Guide to Air Quality Decision Making in California provides you with the basic tools and information needed to participate effectively in the air pollution policy, planning, permitting, and regulatory decision-making processes in California. It will give you a short overview of the government agencies responsible for controlling air pollution and their decision-making processes.

Here are a few tips to help you use the guide:

- Check the Table of Contents for topics covered in this Guide;
- Read the Frequently Asked Questions. Find the answers on the pages near the **???** symbol;
- Scan the guide's sidebars to get a quick overview of the regulatory process and what you can do; and
- Find the words or phrases in **bold** type defined in the "Key Terms" section in the side-bar.
- If you can't find information you neec in the guide, call your local air district or the Air Resources Board or check their web sites. See the contact list on the inside front cover.

This guide ***doesn't*** contain detailed information about air pollutants, air pollution sources, air pollution emissions, air pollution health effects, or air pollution levels in California, but it will show you where to find that information.

In addition, when this guide refers to air pollution policies, it does not include internal government agency administrative policies related to such things as personnel or procurement policies.

responses to all comments received during the public comment period. The FSOR must be submitted to OAL for review and approval. If substantial revisions to the proposed regulations are made at the public hearing, the Board will request another 15-day comment period for the public to comment on the changes. ARB staff responds in writing to the comments received during this 15-day period as well, and those responses become part of the FSOR sent to OAL for their review. Anyone may request a copy of the FSOR.

The OAL has up to 30 days to review the FSOR. OAL reviews the FSOR to see that the regulation is clearly written and not duplicative of other regulations, that the ARB has responded to all public comments, and that proper procedures have been followed in adopting the regulation. Once it is approved by the OAL, or when an earlier effective date is requested by ARB, the rule is filed with the Secretary of State and, except for emergency actions, becomes effective in 30 days. The Administrative Procedure Act, including review by the OAL, only applies to California State agencies and does not cover regulations adopted by local government.

How Do I Get Involved?

The first thing to do if you want to get involved is to get on appropriate mailing lists and attend meetings that the ARB and local air districts conduct. These meetings are a good source of information and also provide an opportunity to raise issues or concerns. In general, the meeting notice provides information about the location, time, and subject for the meeting. If you are going to raise a specific question or concern, it is always wise to do some preparation prior to the meeting. This will allow you to more effectively participate at the meeting. You may submit written or oral comments at a meeting. It is important to know when each is appropriate and how to contact the right people to address your issue.

Meetings with Agency Staff: If you would like to meet with the staff of an agency, you can schedule an appointment to discuss your concerns about a particular issue. You may also want to make an occasional phone call or send an e-mail to establish contact and exchange ideas with appropriate staff. Staff often incorporates input from the public into their work products and proposals for their governing boards, so your participation at the staff level can be very important.

Town Hall Meetings: The ARB staff, as part of the Environmental Justice Stakeholder Group, and several of the local air districts, conduct town hall-style meetings on a regular basis. These meetings provide an open forum for the public to ask questions and raise their concerns about air pollution issues directly to the air pollution agencies. Meeting notices are posted at community buildings, mailed to people on mailing lists, and posted on applicable agency web sites.

Comments on Retrospective Review of CARB Administrative Regulations Per Executive Order S-2-03

California Trucking Association

January 30, 2004

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. Our members range from the one-truck operator to large international companies who serve the public through safe and efficient goods movement. Our industry is in economic crisis and we are seeking your help to keep California truckers moving California freight.

Over the past 15 years, California has transformed itself from a manufacturing-based economy to an assembly and distribution-based economy. Assembly and distribution, the bright spots in California's job creation, takes place through California's homegrown trucking industry and our seamless intermodal transport network. Our industry wants to step up and participate in the new administration's job creation team. We have one dramatic obstacle that is preventing our participation: the recent regulatory hostility towards California domiciled transport industry by the California Air Resources Board.

If the current hostile regulatory environment remains, the already-shrinking California-based trucking industry will be swept out the door to neighboring states. Trucking companies will move jobs and trucks out of California and compete into California by basing the trucks they use in California outside the state. The public would bear the burden of increased emissions, congestion and reduced funding for highways and would receive none of the economic benefits that are high paying jobs for California citizens and properly funded highways.

Never before has the trucking industry seen so many proposals coming down the regulatory pipeline. Never before have the proposals been so controversial and challenging to the liability and ownership of trucks. CTA submits the following comments on the specified issues to be included in the Retrospective Review of CARB Administrative Regulations per Executive Order S-2-03.

1. Amendments to the California Diesel Fuel Regulations (Board Hearing Date: July 24-25, 2003)

CTA joined with CARB in 1999 to advocate for a single national diesel fuel standard. CTA and CARB joined together and filed joint comments seeking one nation-wide standard for 2006. The Environmental Protection Agency (EPA), because of this powerful team, was successful in beating the oil companies who were seeking a roll back to 50 ppm sulfur nation wide. CARB and CTA advocated 15 ppm and won. In addition, this rulemaking included standards for 2007 and subsequent model-year heavy-duty diesel engines.

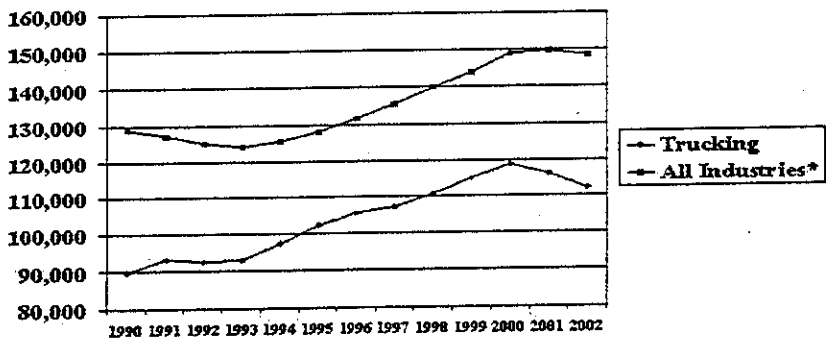
Our 108-member Board of Directors voted to work with CARB to achieve a national fuel standard after a presentation from CARB that this would level the fuel price playing field for California truckers. We were excited at the prospect of finally achieving diesel price parity among the states. To do this, CTA had to file "conflict resolution" with our national organization, the American Trucking Association (ATA). We followed CARB instead of our national organization in seeking price parity.

On July 24, 2003, CARB adopted only the federal sulfur standard and failed to repeal the unnecessary aromatics standard. Amendments to the California Diesel Fuel Regulations on July 24, 2003, not only left us where we were but further restricted our supply. After committing in writing to a national fuel standard, they skirt around the edges and make excuses for the fact that

they dissolved their oral and written contract with us. California's trucking industry feels betrayed after the years of hard work we committed to in obtaining the national fuel standard, and the dishonest way the hearing was handled.

The economic consequences of a single-state fuel have been catastrophic to our members, who are left registered in California as full fee intrastate motor carriers or California interstate base plated motor carriers. The economy depends on transportation and warehousing, and California has lost approximately 7,000 trucking jobs since 2000 as shown in the following graph:

Number of Californians Employed by the Trucking Industry 1990-2002



*Shown in hundreds

Unlike furniture and car manufacturers who moved their operations to other states in the midst of the California's unfriendly and frankly unfair environmental regulations, trucks will remain and have remained in the state; they just won't be carriers originating, fueling paying fees, or supplying jobs in the state. The following table reflects the revenue loss to California due to trucks leaving the state:

Revenue Loss to California Highway Accounts = $2,425,033,374

Scenario 1: $100,000 truck, 25,000 gallons used

State Highway Account - annual

- Federal Heavy Use Tax – (Caltrans) $ 550
- State Fuel Excise Tax $0.263* $6,575
- Weight Fees $ 1,700

Per truck contribution: $ 8,825

CA Interstate Loss (@92%) $614,197,937.50
(Based on national growth slope)

CA Intrastate Loss
200,000 big rigs to 67,152 $1,172,383,600

Annual total loss of truck flight
$1,786,581,537.50

Federal Trust Fund

- Vehicle Excise Tax (12%) $12,000
- Federal Fuel Excise $ .244 $ 6,100
- Tires (12%) $ 1,512

Per truck contribution: $ 19,612

Federal Reporting to other states
Federal Vehicle Excise:
$1,550,808,000 total
$ 172,312,000 annual average
The new trucks purchased outside the state since 1993

Annual Federal fuel Excise $ 424,794,850
Annual Federal Tires Excise $ 128,406,600
$ 553,201,450

Annual totals: $725,513,450

Annual total loss due to truck flight (Federal Trust Fund is apportioned to CA @ 88%): $638,451,836

CARB's economic impact estimates do not accurately reflect what the trucking industry actually pays for California-only diesel. CARB's fuel cost averages compare California averages to the Padd V average of 7 western states. The Padd V includes Alaska, Hawaii, and Oregon, all of which have drastically different average fuel prices from California. Direct daily comparisons demonstrate the inequity:

1/19/04 Prices from Oil Price Information Service (OPIS):

– Phoenix	$1.53	Difference	$0.21
Los Angeles	$1.74	Rate increase	$0.04/mile
– Portland	$1.41	Difference	$0.33
San Francisco	$1.74	Rate increase	$0.07/mile
– San Diego	$1.90	Difference	$0.34
Mexico	$1.56*	Rate increase	$0.07/mile

* US National Average as the estimate

Carriers from other states benefit each time a California-based carrier has to raise their rates to offset increases in diesel prices. Anytime we experience a price spike due to the monopolistic nature of our supply, out-of-state carriers benefit and California carriers go out of their way to fuel in bordering states. CA diesel supply was tight in 1999 and tens of thousands of gallons

were purchased out of state. CA lost the opportunity cost of 311,710,000 gallons of diesel fuel purchases along the I-10 Corridor between Los Angeles and Phoenix, demonstrated in the following table:

	1997	1998	1999	2000	2001
AZ fuel consumption (in gallons)	686,390,000	834,020,000	934,560,000	622,850,000	680,950,000

This translates to losses of $81,979,730 in state excise tax, $21,819,700 in state sales tax, and $76,057,240 in federal excise tax, for a total loss of $179,856,670 to the state *just along the I-10 Corridor.*

The difference in diesel prices further enables out-of-state trucks to outbid California carriers for California's transportation business. States bordering California actually market to our trucking companies to lure them to relocate. Since 1999, California has lost approximately 200,000 CA-based truck registrations to other states (detailed in our comments in Appendix A). The number of interstate trucks operating in CA has increased by 356,000 registrations. For each truck that moves out of California and registers in another state, California's State Highway Account loses $8,525 and our Federal Trust Fund loses $19,612.

Finally, and what should be most compelling to CARB, is that CARB's single state aromatics standard is ineffective at reducing emissions. The electronic engines that are dominating the fleet do not react to fuel impacts; they respond only to the engine electronics.

CARB has overstated the emission reductions and made arbitrary and capricious assumptions that conflict with publicly available registration data and fuel excise tax data. For example, CARB assumes:

- All interstate trucks that come from other states use only CARB diesel while they are here. (Interstate trucks carry 300 gallons of fuel or enough to travel 1800 miles.)
- 25% of trucks on the roads come from outside the state. (Registration data conflict with these numbers with regard to big rigs.)
- Newer model engines are credited 13% Nox reduction for using CARB diesel while EPA will not give credit for this assumption nor is it factual. (Recent engine test demonstrate little or negative reductions on the majority of the fleet.)
- None of the increased VMT from interstate trucks that travel to compete against the trucks domiciled here are accounted for in the model while the excise tax data demonstrate the trends.

Most important, CARB did not seek this standard during the federal rulemaking. Once closed, the federal rulemaking is subject to years of delay should it be reopened. If this was so important to our state clean air plan, why was it never mentioned by CARB in the federal rulemaking? You can understand the position of California's trucking with regard to the credibility of undoing a written and oral contract.

CTA again submits its strong opposition to the "Amendments to the California Diesel Fuel Regulations Including Reduction of the Maximum Permissible Sulfur Content of Motor Vehicle Diesel Fuel" (European Diesel Fuel Adoption), adopted on July 24, 2003. We have included all of our previously submitted comments and correspondence on this issue in **Appendix A** and request that they be re-considered as part of the review, including CARB's joint support documents with CTA advocating for a national fuel standard.

2. Diesel Retrofit Verification Procedure (Board Hearing Date: May 16-17, 2002)

CARB has taken a completely different approach to truck ownership. The warranties that are provided for cars will not be provided for trucks. In fact, the engine a truck is manufactured with today will not meet CARB standards. CTA maintains the same concerns with the Diesel Retrofit Verification Procedure that we have expressed since CARB introduced the regulation and passed it on May 16, 2002. The 5-year or 150,000 mile retrofit warranty in the procedure lacks consumer protection -- the end-user is not protected because of mandatory state modifications to engines. The minimum specified warranty for emission control devices allows a reprieve from all liability for manufacturers and delegates all liability and responsibility to the consumer. This is unprecedented for the purchaser of an automobile; one would ask why it is even considered for a heavy-duty vehicle? A 150,000-mile warranty is just over 10 months some trucks, yet the cost of the capital investment is not reflected in the length of the warranty. The proposed emission control devices are near the cost of a new engine, not comparable to historical emission control devices, and by themselves, not cost effective. Including a 5-year warranty in the same phrase with 150,000 miles is misleading and lacks any research regarding the operational factors of the trucking industry. A standard warranty of 150,000 miles, a 1-year warranty, clearly does not reflect the actual cost of the emission control device, nor does it protect the end-user.

Retrofit, as proposed by CARB, changes the ownership standards of a truck. The liability of emission control, under this new ownership standard, shifts from Fortune 500 engine makers and retrofit device manufacturers to truck owners who are small businesses. This is unprecedented in any country. The European Union countries, years ahead in retrofit experience, do not mandate retrofit as CARB is proposing, using a voluntary approach. For warranties, they require a minimum 2 year unlimited mile warranty to protect their investment in their voluntary government subsidized programs.

The issue of the warranty requirement has been frustrating for CTA's members and staff. CARB has repeatedly dismissed our requests for a more protective warranty, citing that engine warranties are market driven and not mandated by state law. However, truck owners purchase engines because engines make their trucks operate; truck owners are being *forced* to purchase retrofit devices by a CARB mandate that potentially will cause engine failure. CTA is not confident in retrofit technology, and CARB studies indicate in-use retrofit device failures, as do other states. We have included all of our previously submitted comments and correspondence on this issue in **Appendix B,** and request that they be re-considered as part of the review.

3. Control Measure for Diesel Particulate Matter from On Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles (Board Hearing Date: September 25-26, 2003)

CTA, the California Refuse Removal Council (CRRC), and representatives from solid waste collection companies felt we had made progress and had at least somewhat successfully conveyed the hardships that this regulation will cause the industry. The solid waste collection industry is completely at the mercy of the municipalities due to set rates and contracts that are already in effect. The final version of the regulation shows little effort by CARB to make this a workable mandate, despite our past and current objections. CTA believes that this regulation is potentially disastrous to the solid waste collection industry, and still opposes the measure in its entirety.

CARB's authority to mandate retrofit is still in question. California law states that CARB has no authority to require the modification of in-use vehicles unless mandated by statute. The authority to modify a new engine is pre-empted by federal law until such time as the first rebuild. The preemption provisions of the Clean Air Act (CAA) do not allow states to adopt or enforce emission standards on new motor vehicles or engines. CARB has limited authority to adopt emission standards for new motor vehicles, but only if certain conditions are met. Those conditions include adequate "lead time and stability" for any "new" engine or vehicle standard. In order to proceed with this rule, CARB would need to obtain a waiver of federal preemption from the EPA.

Additionally, CTA opposes this regulation due to the impact it will have on the entire trucking industry. Petroleum haulers and private fleet owners, who can't negotiate contracts to cover the costs of the retrofit devices, are next in line for retrofit mandates by CARB. These companies will fall prey to out-of-state carriers who can come in, offer lower rates, and are shielded by the Interstate Commerce Clause of the U.S. Constitution. We have included all of our previously submitted comments and correspondence on this issue in **Appendix C,** and request reconsideration as part of the review.

4. "Rush to Hearing": California-Only Truck Standard, Proposed ATCM for Transport Refrigeration Units, Amendments to the Diesel Emission Control Strategy Verification Procedure, Heavy-Duty Diesel Engine Software Upgrade Regulation (Chip Reflash)

CTA asserts that the four above referenced regulations that have yet to be heard represent a last minute rush by CARB to adopt business-killing regulations that were held back by the former administration. These regulatory proposals, with sufficient research and public input, could be moderated. The current versions lack consumer protection, encourage owners to register vehicles in other states and will significantly impact California's State Highway Account. Simply put, we can't operate different trucks than our competitors that outnumber us.

If adopted, California will forgo clean air for more truck traffic as more trucks move across our borders that do not even meet current California air standards.

Specifically, the items are being put forth without legal standing or state authority, and in summary will implement:

- Mandatory scrappage of refrigerated trailers (TRU) for California-only trucks
- CARB's plans to renegotiate "consent decrees" (Oxides of Nitrogen rebuilds of existing engines found to violate the spirit of federal testing requirements) shifting the burden from engine manufacturers, who are parties to the agreement, to California truckers.
- A California-only truck standard that will force truck manufacturers to produce trucks with idling shut off devices only for California and will create serious fatigue issues for the rest hours of a trucker.

CTA would like to resubmit comments filed on these regulations. We have included all of our previously submitted comments and correspondence on this issue in **Appendix D,** and request that they be re-considered as part of the review.

5. Lawsuit Settlement Between CARB And Environmental Special Interest Groups

In 1997, environmental groups sued CARB (Case No. 97-6916 JSL) for oxides of nitrogen measures in the 1994 Ozone State Implementation Plan (SIP) that were not implemented. On December 10, 1999, a friendly settlement was reached between the environmental special interest groups and CARB. Unbeknownst to CTA, retrofit provisions for specific heavy-duty trucks operators (garbage trucks, petroleum tank trucks and refrigerated trailers) were included in this settlement designed to reduce ozone pollution through oxide of nitrogen reduction.

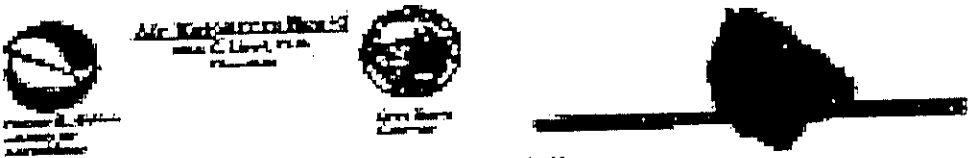
CARB is using this lawsuit to justify moving ahead with particulate matter reductions, a completely different pollutant. Going around the legislative and executive branches of our government undermines democracy and deprives us of due process. Even though the settlement does not bind CARB's Board to pass the regulations, it does bind CARB staff to propose them, regardless of input from stakeholders. The practice of privately settling lawsuits allows special interest groups to control CARB's regulatory agenda and leaves out the parties that will have to pay for the results. This is unfair and unconstitutional, and CARB should commit to refraining from such practices in the future.

The California Trucking Association asks that you re-think these business-killing regulations. We cannot survive as an industry in our state with the burdensome regulations proposed by CARB.

Appendix A

Amendments to the California Diesel Fuel Regulations

Board Hearing Date: July 24-25, 2003



July 21, 1998

Air Resources Board
Alan C. Lloyd, Ph.D.
Chairman

Gray Davis
Governor

July 21, 1999

Docket No. A-99-06
U.S. Environmental Protection Agency
Air Docket (6102)
Room M-1500
401 M Street SW
Washington, DC 20460

Re: Diesel Fuel ANPRM

This is in response to the recently released "Diesel Fuel Quality" Advanced Notice of Proposed Rulemaking" (ANPRM). We support national changes to diesel fuel to directly reduce emissions from diesel powered vehicles and equipment and to facilitate the use of future control technologies.

We support reducing sulfur content in diesel fuel to a maximum of 15 ppm because of the significant emissions benefits that can be achieved in existing and future diesel vehicles and engines. First, reducing the sulfur content in diesel fuel would immediately reduce particulate and associated toxic emissions from existing diesel-powered engines. Secondly, it would enable advanced control technology to be used to further reduce both particulate matter and oxides of nitrogen emissions from diesel engines and vehicles.

We recommend that a single specification be set for all motor vehicle diesel fuel (on-road and off-road) and that sulfur be specified as a specific maximum [illegible] limit. This would simplify the enforcement of a regulation and [illegible] [illegible]. Enforcement should be phased in to allow the distribution system [illegible]. In implementing California's Cleaner Burning Gasoline Regulations, enforcement began at the production level. A 45 day period was given for Cleaner Burning Gasoline to be distributed through the pipeline before enforcement began at terminals. Another 45 day period was given to allow retail storage tanks to be turned over before enforcement began at the retail locations. This should allow for an appropriate timeline for a new diesel fuel to be distributed.

The analysis of potential changes in fuel specifications [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Comments of the California Trucking Association on the Amendments to the California Diesel Fuel Regulations Including Reduction of the Maximum Permissible Sulfur Content of Motor Vehicle Diesel Fuel (European Diesel Fuel Adoption), July 24, 2003

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. CTA is the second largest trucking organization in the world, providing comprehensive policy, regulatory and legislative support to our member companies. Our members range from the one-truck operator to large international companies serving the public through safe and efficient goods movement.

CTA supports the efforts of the California Air Resources Board (CARB) in reducing emissions from heavy-duty, on-road diesel vehicles so long as the rules apply to every truck competing for freight in the state. It is and has been our objective to work with the CARB to accelerate emission reductions in the South Coast and statewide to meet the deadlines required by the federal Clean Air Act. CTA supported the federal Environmental Protection Agency (EPA) in their successful efforts in adopting emission standards for 2007 and subsequent model-year heavy duty diesel engines and the corresponding fuel standard set for implementation in June 2006. You are very aware of our support as you solicited it from our Board of Directors on two occasions – once for a 30 ppm sulfur content diesel fuel nationwide and later for a 15 ppm sulfur diesel fuel standard.

Today, CTA must submit its strong opposition to the "Amendments to the California Diesel Fuel Regulations Including Reduction of the Maximum Permissible Sulfur Content of Motor Vehicle Diesel Fuel" (European Diesel Fuel Adoption). First and foremost, CARB has violated Government Code Section 11346.2 in its entirety. A finding that no economic harm or cost is associated with a California only fuel standard that will cost state refiners millions of dollars to comply with is unconscionable. Adopting a mirror image federal fuel standard was not considered as an alternative. Not adopting the federal sulfur standard was something that blatantly violates the Clean Air Act with respect to compliance alternatives. Just as the Federal Motor Carriers Administration violated NEPA when they refused to do an Environmental Impact Assessment on NAFTA, CARB has violated the Government Code by failing to evaluate facts, evidence documents and testimony on the economic harm to small businesses of a higher prices diesel fuel in California.

The only difference between California's diesel fuel standard and electrical deregulation is the costs of electrical deregulation were immediately passed onto the consumer. With California diesel fuel, when truckers tried to pass on the diesel fuel surcharges, their national customers looked at the national average and refused to accept any cost increases. If California businesses were required to use trucks with CARB diesel only, the transportation costs statewide would have increased 3-8 cents per mile, depending the day the fuel was purchased. However, California would not have lost 249,641 truck registrations and the nation would not have gained 356,000

interstate trucks registrations that operate freely and more competitively in our state at the expense of those who base here.

The economic consequences are catastrophic to our members who are left registered in California as full fee intrastate motor carriers or California interstate base plated motor carriers. The economy depends on transportation and warehousing, an industry that provides 1 in 12 private sector jobs. Unlike furniture and car manufacturers who moved their operations to other states in the midst of the California's unfriendly and frankly unfair environmental regulations, trucks will remain and have remained in the state; they just won't be carriers originating, fueling or paying fees in the state.

Under the proposed European Diesel Fuel Standard, trucking companies who are based in California will be prohibited from retaining their national, state and local contracts due to the price spikes and the cost of fuel. We don't pay for the quarterly or yearly average. We pay the price of the day at delivery. The weekly volatility is a function of a closed market, we are asking you to open up the market to competition. Price spikes escalate up to 40 cents between California and our bordering states. This leaves our members two choices: 1) go out of business, or 2) move or fuel their trucks outside the state for registration and fueling purposes.

The reason we would be left with these two choices is simple. Competition from federal and soon international trucks have and will prevent trucking companies located in the state from passing on fuel surcharges to cover increased costs and price volatility. International and national carriers will use the free market federal fuel to further erode the 22% of trucks left in the state.

Lack of a free market supply of diesel fuel has a crippling effect on California-based trucking companies. Those companies that don't have routes that allow them to avoid buying fuel in California haul freight for a loss when prices spike. In addition, their ability to purchase new trucks is stripped and they are forced into operating older equipment longer. Many California truckers did not survived the existing CARB diesel cartel. Now the stakes are higher as the California State Highway Account has and will continue to fall far short of the revenue needed to maintain roads coming from state excise taxes on fuel and registration weight fees of which California trucks pay the lion share.

Our comments follow:

1. CARB has refused and continues to refuse to comply with the Public Record Act with regard to a records regarding approval of Alternative Fuel Formulations (Secret Formulas).

Presently, CARB is refusing to provide the requisite information concerning the alternative diesel fuel formulations under the Public Record Act (PRA). The purpose of the PRA is expressly set forth in the PRA: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to

information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Times Mirror Co v. Superior Court (1991) 53 Cal.3d 1325, 1336 [283 Cal.Rptr 893]; see also Wilson v. Superior Court (1996 51 Cal.App 4th 1136, 1141 [59 Cal.Rept.2d 537]. Thus, the PRA was passed "to ensure public access to vital information about the government's conduct of its business." CBS, Inc v. Block (1986) 42 Cal.3d 646, 656 [230 Cal.Rptr.362, 725 P.2d 470].

The PRA was modeled upon the federal Freedom of Information Act and has a common purpose. Its core purpose is to contribute significantly to public understanding of government activities. Accordingly, federal "legislative history and judicial construction of the FOIA" may be used in construing California's Act.

Disclosure of public records thus involves two fundamental yet competing interests: (1) prevention of secrecy in government; and (2) protection of individual privacy. Consequently, both the FOIA and the PRA expressly recognize that the public's right to disclosure of public records is not absolute. In California, the PRA includes two exceptions to the general policy of disclosure of public records: (1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the "catchall exception" of the PRA, which allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure. None of the express exemptions found in the PRA would apply in this matter.

CTA finds that CARB, in keeping the actual standards from the regulated industry and others, prohibits out-of-state oil refiners from marketing diesel fuel in California. This is a clear "clean overbalance" on the side of confidentiality

Specifically, while there is no specific exemption for the records regarding the alternative fuel formulations, CARB has asserted that it is not able to produce the records due to the fact that the alternative fuel formulations are tantamount to the individual refiner's "proprietary information." This line of reasoning is certainly suspect as it does not appear that any trade secret or proprietary information would be released by requiring CARB to produce the fuel formulation, testing, contract and assessment documents regarding approved fuels to the public.

The courts have ruled on what is a trade secret:

"A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral

events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret...Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it a secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be a difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in one's trade secret are: (1) the extend to which the information is known outside of his business; (2) the extent to which it is known by employees and other involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others."

The definition of a trade secret states it may consist of a formula which is used in one's business which gives him a competitive advantage over his competitors who do not use it. The alternative fuel formation "formula" does not fall within this definition. While it may be true the protection of the alternative formulations provides the refiners presently under contract with CARB a competitive advantage over other refiners, it is CARB's approval of the formula that gives the refiners this competitive advantage. This formulation is not a unique invention engineered by the refiners for their competitive advantage. These formulations are submitted to CARB for its approval to enable the refiners to sell diesel fuel in California. In fact, the very definition states that a trade secret is not "the amount or terms of a secret bid for a contract." The submission of the alternative fuel formations is exactly that, namely a secret bid for a contract between CARB and the oil refiners to produce diesel fuel for sale in California. As such, CARB must disclose the identity of the refiners and the formations that are currently approved for sale in California.

Furthermore, presumably CTA or any other party could test the alternative diesel fuel formations independently and determine its properties. Since a party can independently determine the makeup of the diesel fuel, it does not appear to fit within the traditional

notion of a trade secret. The diesel fuel's formation itself is not the unique factor that makes it valuable; it is CARB's approval that gives it value.

CARB could argue that it was protecting the refiner's trade secrets, then it would most likely assert the catch-all exemption discussed above. The court would utilize a balancing test weighing the public interest served by withholding the records against the public interest by disclosure. The burden of proof would be on CARB to demonstrate a "clear overbalance" on the side of non-disclosure.

Presently, the diesel fuel in California sells for approximately twenty cents a gallon more than in other states. Under the catch-all exemption, it is difficult to imagine a court not finding that the disclosure of this information, if it could possibly reduce the current price of diesel fuel and increase the supply, outweighs the non-disclosure of the information. In addition, **it is not in the public's interest to have a state agency acting in secrecy behind closed doors approving certain formulations under apparently no standards, or standards that are not public standards applicable to all.**

CTA is submitting its second and final request for information under the Public Records Act and asking for disclosure of all relevant information.

2. CARB's has exceeded its expressly granted authority and has left the trucking industry, the fuel user, no avenue to address the aromatic issue by not evaluating adopting a mirror image federal standard as an alternative

The Mulford-Carrell Air Resources Act sets forth a comprehensive regulatory scheme for the control of pollution generated by automobiles. CARB is required to adopt emissions standards for motor vehicles. "Emissions standards" are defined as "specified limitations on the discharge or pollutants into the atmosphere." CARB is designated as the Air Pollution Control Agency for all purposes set forth under state implementation plan required the Federal Clean Air Act. CARB must adopt standards, rules and regulations in accordance with the Administrative Procedure Act necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by the Mulford-Carrell Air Resources Act and by any other provision of law.

Significantly, prior to adopting or amending any standard or regulation relating to motor vehicle fuel specifications, CARB must, after consultation with public or private entities that would be significantly impacted, do both of the following: (1) determine the cost effectiveness of the adoption or amendment of the standard or regulations (the cost effectiveness shall be compared on an incremental basis with other mobile source control methods and options), and (2) based on a preponderance of scientific and engineering data in the records, determine the technological feasibility of the adoption or amendment of the standard or regulation. That determination shall include, but is not limited to, the availability, effectiveness, reliability and safety expected of the proposed technology in an application that is representative of the proposed use.

Further, prior to adopting or amending any motor vehicle fuel specification, CARB must do both of the following: (1) to the extent feasible, quantitatively document the significant impacts of the proposed standard or specification on affected segments of the state's economy. The economic analysis shall include, but is not limited to, the significant impacts of any change on motor vehicle fuel efficiency, the existing motor vehicle fuel distribution system, the competitive position of the affected segment relative to border states, and the cost to consumers, and (2) consult with public or private entities that would be significantly impacted to identify those investigative or preventative actions that maybe necessary to ensure consumer acceptance, product availability, acceptable performance, and equipment reliability. Significantly impacted parties shall include, but are not limited to, fuel manufactures, fuel distributors, independent marketers, vehicle manufacturers, and fuel users.

Therefore, the Legislature has granted specific authority for CARB to promulgate the diesel fuel regulations that it presently has. Currently, the California diesel fuel regulations can be found in Title 13, California code of Regulations Sections 2281 and 2282. These sections were last amended June 4, 1997, when new testing procedures were implemented. Section 2281 sets forth the maximum sulfur content for diesel fuel. Pursuant to section 2281 (a)(1), on or after October 1, 1993, no person shall sell, offer for sale, or supply any vehicular diesel fuel unless the aromatic hydrocarbon content does not exceed 10% by volume for a large refinery, or 20% by volume for a small refinery. Section 2282 also contains an alternative formulation standard that can be used instead of the 10% or 20% aromatic hydrocarbon standard.

In conclusion, California has presently set forth the standards for diesel fuel that have set California apart from the rest of the nation. Specifically, where the Federal Clean Air Act requires diesel fuel to have no more than 15 parts per million of sulfur, California has added the additional requirement for the reduction of the aromatic hydrocarbon content and continues to maintain it without scientific information that proves it is cost effective.

Recommendation 2: CARB should evaluate a mirror image federal standard and incorporate the required economic analysis on the trucking sector to include the opening of the borders in 2005.

3. The Alternative Fuel Formation (Secret Formula) is an "Underground Regulation"

CARB utilizes the procedure set forth in the 13 CCR 2282 to certify alternative diesel fuel formulations. After approval by CARB, this diesel fuel may be sold in California. At this time, we are unaware of what these alternative formulations are and, as discussed above, CARB is not disclosing this information based on what it claims to be the proprietary rights of the refiners.

CARB is an administrative state agency that only has as much power as the legislature grants to it. California requires and strongly enforces elaborate pre-adoption procedure for all regulations. In fact, the APA prohibits state agencies from utilizing any rule which is a regulation, unless the rule has been duly adopted as a regulation. A regulation is defined as "every rule, regulation, order, or standard (of) general application...adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the state agency." If the Office of Administrate Law (OAL) is notified of or learns of the issuance, enforcement or use of any such regulation which has not been properly adopted, it can issue a determination as to whether it is a regulation and make its determination available to the public and the courts. Anyone can seek an OAL determination, and the determination is judicially reviewable. In practice, OAL has issued a steady stream of such determinations which consistently make close calls in favor of broad coverage for the APA and narrow construction of its exceptions.

CARB's information regarding the alternative fuel formulations, show that CARB is actually acting pursuant to the preset standards that have not been formerly adopted as regulations. Specifically, we have been informed, in writing by Chairman Lloyd, that CARB may desire to have its diesel fuel meet the standards promulgated by the Worldwide Fuel Charter. It may be the case that CARB is actually presently using these standards under the guise of "alternative fuel formulations." CARB is actually acting and being directed by an "underground regulation." CARB utilizes preset specifications, methods, or procedures that are not specifically provided for in approved regulations, creating "underground regulations."

CARB is proceeding in certification of diesel fuel pursuant to standards that have not been formally adopted pursuant to the APA. The only issue in the proceeding is whether the guideline or standard meets the definition of "regulation." Clearly, since virtually all refiners use the alternative formulation, it is a de facto regulation.

Recommendation 3: CARB should cease and desist deviating from express standards and is adopt the secret formulas making them public instead proceeding with its own standards.

4. CARB is violating the Interstate Commerce Clause of the United States Constitution

Article I, § 8 of the United States Constitution contains 18 clauses enumerating specific powers of congress. None of these provisions bestowing power on congress is more important than Article I, § 8, which states: "The Congress shall have the power...(t)o regulated commerce with foreign Nations, and among the several States, and with the Indian Tribes..." This provision has been the authority for a broad array of federal legislation, ranging from criminal statues to securities laws to environmental laws.

Because of the broad grant of power to Congress pursuant to the Commerce Clause, the principle known as the dormant commerce clause has emerged. The dormant

commerce clause is the principle that state and local laws are unconstitutional if they place an undue burden on interstate commerce. There is no constitutional provision that expressly declares that states may not burden interstate commerce. Rather, the Supreme Court has inferred this from the grant of power to Congress to regulate commerce among the states.

The question raised by the "dormant commerce clause" is whether a state or local law excessively burdens commerce among the states. In order to make this determination, the crucial initial question is whether a state law discriminates against out-of-staters, or whether it treats all alike regardless of residence. This is most often the decisive issue because state or local laws that discriminate on their face rarely are upheld, while nondiscriminatory laws are infrequently invalidated.

a. The Regulation Facially Discriminatory.

In reviewing the regulation in question setting forth the alternative fuel formulation procedure, the regulation discriminates against out-of-state producers and/or refiners. Specifically, the Executive Officer of CARB may certify any alternative diesel fuel formulations upon application of any "producer or importer." Producer is defined as "any person who produces vehicular diesel fuel in California." An importer is defined as "any person who first accepts delivery in California of vehicular diesel fuel." According to these definitions, no entity outside of California has the standing to apply to CARB for approval on alternative diesel fuel formulation. However, the regulation does not provide that no diesel fuel from outside of California can be shipped to a California importer who in turn dispenses it in California. Therefore, the law is facially discriminatory against interstate commerce.

A state law that discriminates against out-of-staters will be upheld only if it is proven that the law is necessary to achieve an important government purpose. A State law that discriminates against interstate commerce must be justified by a purpose that is "unrelated to economic protectionism." The Supreme Court has explained that "shielding in-state industries from out-of-state competition is almost never a legitimate local purpose, and state laws that amount to simple economic protectionism consequently have been subject to a virtual per se rule of invalidity."

The regulations are drafted to protect the economic interests of the oil refiners in California who supported the alternative diesel fuel program. There is not a legitimate basis for not allowing an out-of-state refiner to apply for approval of an alternative diesel fuel formulation.

b. Cost effective alternatives were not evaluated.

The Health and Safety Code simply states that CARB may adopt and implement motor vehicle fuel specifications for the control of air contaminants and sources of air pollution

which CARB has found to **be necessary, cost effective, and technologically feasible, to carry out the purposes of this division, unless preempted by federal law.** The control of air pollution is certainly rationally related to the health of the citizens of California. The regulations of the Board do not reflect provisions of the statute.

The procedure employed by CARB in adopting, amending, or appealing regulations is subject to Chapter 3.5 of the Administrative Procedures Act. A regulation is ordinarily invalid unless it fails within the scope of authority conferred on the agency by statue.

The APA rule making provisions apply to CARB and the regulations that it promulgates. "Regulation," within the scope of the APA, is broadly defined as every rule, regulation, order or standard of general application by any state agency to implement, interpret or make specific to law enforce or administered by it or to govern its procedure.

CARB must prepare by January 30th of each year, a rule-making calendar for that year. The calendar must specify projected dates on which the agency plans to (1) publish the notice of proposed action for each fuel making, (2) schedule a public hearing if required or requested, (3) adopt the regulations, and (4) submit the regulations to the Office of Administrative Law for review. Notice of proposed action on the regulation must generally be given at least 45 days prior to the hearing and close of the public comment, on the proposed action. The person or entities notified, the manner of notice, and the content are prescribed by statute.

The agency must also prepare, submit to the Office of Administrative law with notice of the proposed action, and make available to the public on request (1) a copy of the express terms of the proposed regulation, and (2) an initial statement of reasons for proposing the action. An agency is required under the APA to explain, preliminarily in the Notice of Proposed Adoption, and comprehensively in the "Final Statement of Reasons," (1) the necessity for the regulation, **(2) why that regulation was chosen instead of some alternate form of regulation that might be of lesser impact,** and (3) why changes from the originally proposed text were made or not made in response to objections or comments received. A public hearing must be held if, no later than 15 days before close of the written comment period, an interested person or duly authorized representative submits a written request to the agency. The agency must, to the extent practicable, provide notice of a time, date and place of hearing by mailing notice to persons who have requested notice. At the hearing, oral or written statements, arguments or contentions must be permitted.

After CARB submits the regulations to the Office of Administrative Law, the Office of the Administrative Law determines on the basis of specified standards, i.e., necessity, authority, clarity, consistency, reference and non-duplication, whether or not to approve the regulation. Within 30 calendar days after the regulation is submitted to the office for review, the office must either approve it and transmit it to the Secretary of State for filing or disapprove it and return it to the agency.

As stated above, the Health and Safety code sets forth specific standards by which CARB must determine the reformulation standards. Section 43013 states that CARB may adopt and implement motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which CARB has found to be necessary, cost effective and technologically feasible, to carry out the purposes of this division, unless preempted by federal law.

Significantly, prior to adopting or amending any standard or regulation relation to motor vehicle fuel specifications, CARB must, after consultation with public or private entities that would be significantly impacted, do both of the following: (1) determine the cost effectiveness of the adoption or amendment of the standard or regulation (the cost effectiveness shall be compared on an incremental basis with other mobile source control methods and options), and (2) based on a preponderance of scientific and engineering date in the records, determine the technological feasibility of the adoption or amendment of the standard of regulation. That determination shall include, but is not limited to, the availability, effectiveness, reliability and safety expected of the proposed technology in an application that is representative of the proposed use. Further, prior to adopting or amending any motor vehicle fuel specification, **CARB must do both of the following: (1) to the extent feasible, quantitatively document the significant impacts of the proposed standard or specification on affected segments on the state's economy. The economic analysis shall include the significant impacts of any change on motor vehicle fuel efficiency, the existing motor vehicle fuel distribution system, the competitive position of the affected segment relative to border states, and the cost to consumers, and (2) consult with public or private entities that would be significantly impacted to identify those investigative or preventative actions that may be necessary to ensure consumer acceptance, product availability, acceptable performance and equipment reliability. Significantly impacted parties are fuel manufactures, fuel distributors, independent marketers, vehicle manufactures and fuel users.**

If CARB passed a stricter standard than the current "national standard" slated for implementation in 2006, CARB would abuse its discretion and fail to follow and/or reasonably interpret the standards set forth in Health and Safety Code section 43013.

Recommendation 1: Eliminate the underground regulations and secret formulations. Allow interstate refiners to sell complying fuel in the state by adopting a prescriptive standard that meets the state requirements for cost effectiveness and provide the regulated industry the Public Records we have requested on numerous occasions from CARB.

2. CARB failed to consider or quantify the economic impact on the 1 in 12 trucking related jobs and their small business employers in California.

CARB staff found "no additional adverse effect on small businesses because of the cost impacts of the regulations." The proposed European Diesel Fuel standard fails to incorporate an economic impact analysis related to trucking and warehousing jobs and incorrectly assumes no economic impact. Even the South Coast AQMD rule 431.2 assumed between a .074 and .187 job loss in 2005.

a. Retail Price vs. CARB Average Prices and the Volatility of Price Spikes

CTA evaluates the weekly retail price, which is what we pay in real time for fuel, against the retail price of the cities in bordering states. CARB takes a quarterly average of the Padd 5, which includes 7 states specifically: Hawaii, Alaska, Washington, California, Arizona, Nevada & Oregon. Using California, Alaska and Hawaii in the average is mathematically incorrect.
Using the arithmetic quarterly mean (also known as the average) is also incorrect. The sum of all Padd 5 quarterly averages divided by the number of quarterly averages does not provide valuable data.

The mean is a good measure of central tendency for roughly symmetric distributions but can be greatly misleading in evaluating extent of dispersion from the mean. For example, assume the average of the stock market growth was 5% per year for the 10 past years. Without a further explanation as to the volatility, one would believe the stock market returns to be like a bank account. Each year, you invest, you get the 5% average. However, the facts are the 5% return in the stock market comes from averaging years of 20% gain with years of a loss of minus 10%.

Ask anyone who invested after 1999 what the 10 year average gain of 10% means to them. They probably lost over 25% per year for the last three years. If the average return were the only value presented, you would have a misleading picture of the risk related to the return and you would have a very unhappy client who found their 3 year loss was far more relevant than the10 year average gain .

The full explanation is to provide the range of values (spread) that compose the mean. For example, let's say the average diesel differential is 5 cents per gallon. If the range is from 1 cent over to 10 cents over, you would say, "What's the truckers' problem?" However, if the range is from 1 cent to 50 cents per gallon (when a CARB-secret formula refinery shuts down) you being to understand the economic crisis faced by the truckers. The trucker can never price his service to recover the short, but powerfully impacting 50 cent price spike.

This is the discrepancy between the industry retail spikes and CARB's quarterly average of a seven year average. CARB's extended smoothing of the prices repeatedly masks the severity of the price spikes and the real volatility at the pump. If CARB used these tactics on Wall Street, they would be considered hustling and investigated. Hiding behind an average value without giving full information as to the range of price spikes over time does not accurately reflect the real costs to the trucking company who has to

purchase the fuel weekly. When the spread volatility comes into play, you can see that the California truckers are being played like the small investors were by the Wall Street insiders.

This intellectual dishonesty engaged by CARB could not exist even on Wall Street. Even single stock prospectus must refer to the volatility of expected returns. CARB's offer of proof as to the average does not possess that appropriate factual disclaimer.

This weeks OPIS prices tell the real story. At a time when supply is plentiful look at the retail prices of diesel fuel in California and Arizona.

OPIS TRANSPORTATION

OPIS WEEKLY DIESEL AVERAGES 7/21/03

National Retail Averages	This Week	Week Ago	Change	Cost/Mile
United States	1.4276	1.4169	0.0107	0.2196
Canada	1.5699	1.5744	-0.0045	0.2415

National Wholesale Averages	This Week	Week Ago	Change	Cost/Mile
United States	0.8544	0.8458	0.0086	0.1314
Canada	0.9039	0.8871	0.0168	0.1391

Metro Averages	State	Retail	Estimated Cost	Estimated Spread	Retail Less
Phoenix	AZ	1.4587	1.4594	-0.0007	1.1887
Tucson	AZ	1.4784	1.4415	0.0370	1.2084
Bakersfield	CA	1.5828	1.6001	-0.0173	1.3066
Barstow	CA	1.5434	1.5202	0.0231	1.2672
Brisbane	CA	1.7490	1.5213	0.2277	1.4728
Chico	CA	1.6344	1.5459	0.0884	1.3582
Colton	CA	1.6037	1.5081	0.0957	1.3275
Eureka	CA	1.7504	1.5839	0.1665	1.4742
Fresno	CA	1.5941	1.5527	0.0413	1.3179
Imperial	CA	1.5390	1.5197	0.0193	1.2628
Los Angeles	CA	1.6736	1.5019	0.1718	1.3975
Sacramento	CA	1.6516	1.5285	0.1231	1.3754
San Diego	CA	1.8734	1.5058	0.3677	1.5973
San Francisco	CA	1.8103	1.5061	0.3041	1.5341
San Jose	CA	1.6258	1.5205	0.1053	1.3496
Stockton	CA	1.5486	1.5355	0.0131	1.2725
Las Vegas	NV	1.5230	1.4698	0.0531	1.2455
Sparks	NV	1.5801	1.5116	0.0685	1.3026
Eugene	OR	1.3872	1.2097	0.1775	1.3866
Portland	OR	1.3880	1.2076	0.1804	1.3874
Umatilla	OR	1.3866	1.2377	0.1489	1.3860

No economic impact is unfair based on the real harm this fuel standard has and continues to have on small businesses. This incorrect and insufficient assessment is far from meeting the state law regarding the assessment of economic costs to small business, the lion share of trucking companies located in California. As stated in Health & Safety Code section 43700:

> 11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:
>
> (b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:
>
> (1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.
>
> (2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.
>
> (3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(5) A department, board,...Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the **Code** of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public **safety**, public welfare, or the environment.

(c) .... However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

Underlined are the areas where CARB has violated the Government Code and should they move ahead would be doing so unlawfully. Failure to consider the alternative of a national fuel standard and the economic opportunity costs of registration, state and federal taxes foregone to bordering states fails to meet the minimum requirements of state law. One in twelve private sector small business jobs are at stake at a time when the state is in serious financial trouble.

CARB's incorrect depiction of the taxes in California is incorrectly blaming the sales tax for the price spikes.

California fuel taxes are in line with the bordering states. In fact, when sales tax is added in, California's state excise and sales tax are still less than Arizona and Nevada's state excise tax even though these bordering states do not assess sales tax on fuel.

2003 State Motor Fuel Tax Rates for Heavy Vehicles

Federal Excise Tax: $0.244

*Includes 7.5% sales tax
Sources: Robert C. Pitcher, Esq., Annandale, VA

CALIFORNIA TRUCKS COMPETING WITH FEDERAL TRUCKS & THE ECONOMIC CONSEQUENCES TO THE STATE

Diesel fuel is the lifeblood of California goods movement. California's trucking industry is familiar with unique diesel fuel blends and their corresponding retail cost in contrast with their estimated manufacturing cost. In 1988, the California Air Resources Board (CARB) adopted a California-only diesel fuel standard and set a compliance date of October 1, 1993. The regulations required that all motor vehicle diesel fuel sold within the state must not only meet the federal low-sulfur requirements of 500ppm but must also meet the aromatic equivalency of no more than 10%. The cost of a California-only diesel fuel was estimated by CARB at between 4 and 6 cents per gallon more than federal diesel fuel.

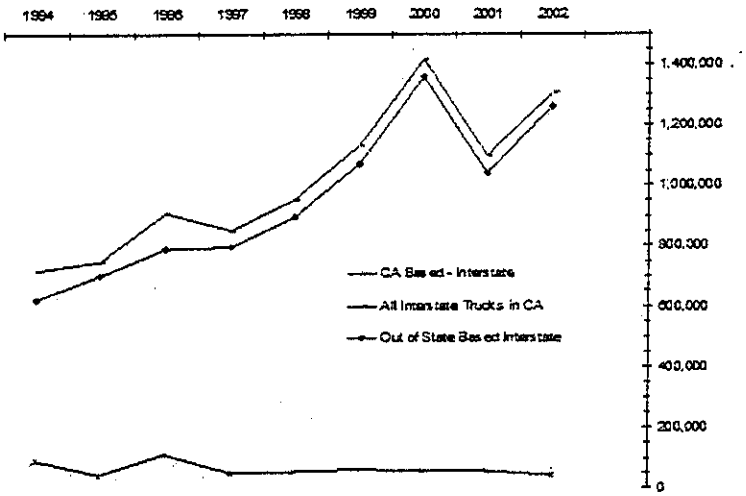
In 2000, CTA filed comments on South Coast Rule 431.2 and provided data from DMV that big rigs only account for 148,479 (Mike Kenny, CARB 6/14/2000) of the 1,205,968 (Francine Davies, DMV 6/13/2000) that compete for the freight contracts in California. Today, looking at the same data for calendar year 2002 we see the flight of California trucks. The 148,479 big rigs that paid full fee registration of $1700 declined to 82,748 and the out of state based trucks increased to 1,439,373. The State Highway Account lost the $1700 per truck in weight fees which were replaced by trucks reporting 3% of their time in California which represents $57 in its place.

1999 2002

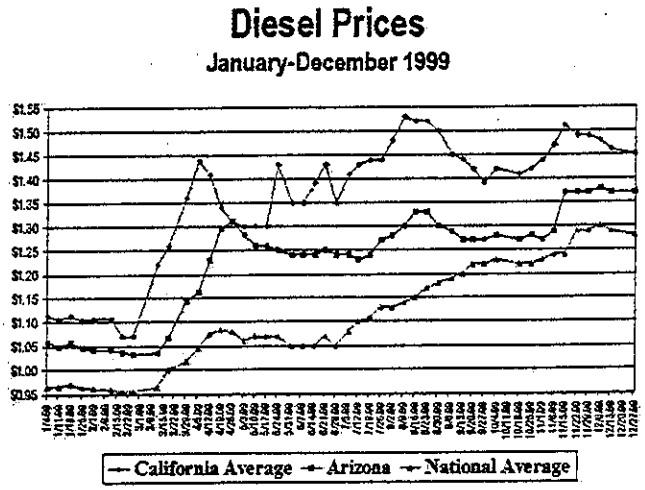
Intrastate Big Rigs	148,000	67,152
Intrastate Registrations	656,000	423,000
CA Based Interstate	61,000	44,359
CA Based IRP Miles (Percent)	82.5%	63.035%
Out-of-state Based Interstate	1,089,000	1,439,373
Out-of-state Based IRP Miles (Percent)	8.5%	3.0%

*Numbers from DMV IRP Unit

Interstate Registration Data by Base Plate
Interstate Registration Program (IRP) Website



As the trucks left the state, so did fuel purchases and taxes. To demonstrate the 1999 case scenario, a graph of California fuel prices (as reported by OPIS) follows:

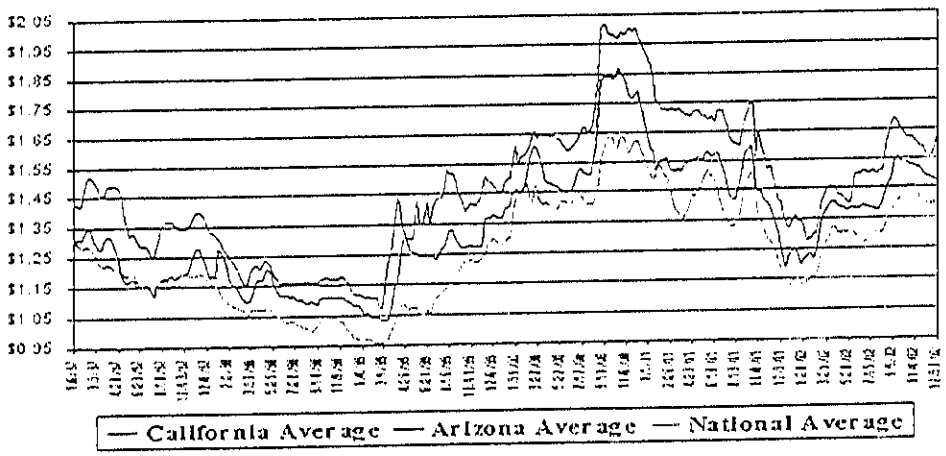


Source: *Diesel Price Index*, Oil Price Information Service and U.S. Department of Energy

The following chart shows the price of fuel as compared to the national average, which is nearly 40 cents a gallon more over a long period of time.

Diesel Prices

January 1997-December 2002



Source, *Diesel Price Index*,Oil Price Information Service and U.S. Department of Energy

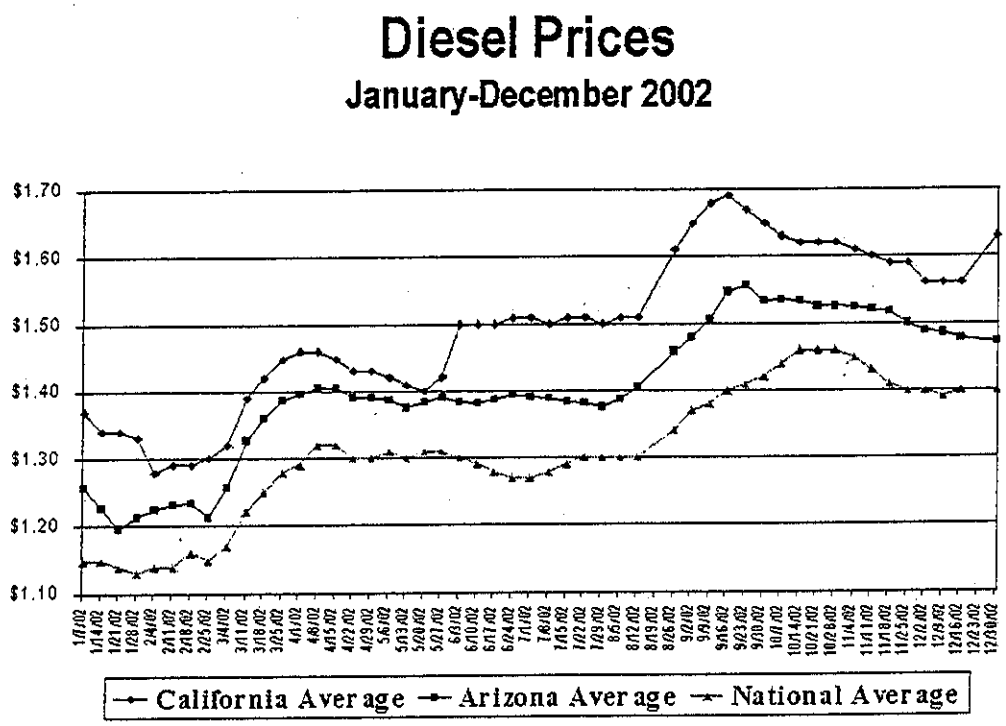
In 1999, the fuel supply was very tight in California and many gallons were burned here, yet purchased outside the state. Evaluating what that meant for the competing state, The Arizona Department of Transportation reports the following pattern in on-road diesel fuel consumption:

	1997	1998	1999	2000	2001
AZ fuel consumption (in gallons)	686,390,000	834,020,000	934,560,000	622,850,000	680,950,000

The trend is clear--when fuel prices escalate in California, fuel purchases move to bordering states along interstate corridors. We lose not just full fee registrations, (a total of 233,000) for this case study from 1999-2002), but more significantly, state sales and excise tax of diesel and federal excise taxes. Instead of full fee registrations and taxes, we are getting a marginal percentage towards the state coffers.

The state lost the opportunity cost of 311,710 gallons of diesel fuel purchases on the I-10 corridor due to short diesel supply and price spikes in California. This translates to a loss of $81,979.73 in state excise tax, $21,819.70 in state sales tax, and $76,057.24 in federal excise tax. That's a total loss of $103,779.43 to the state of California *just along the I-10 corridor*. Not only did the air not benefit from the 6% reduction of cleaner CARB diesel as claimed in the air quality model, but flight of trucks to other states has and will

continue to displace revenue during tight supplies. The graph below demonstrates more stable diesel prices in 2002.



Source: *Diesel Price Index*, Oil Price Information Service and U.S. Department of Energy

The difference in the fuel prices along I-10, one of California's most important interstate corridors, is staggering. Interstate trucks can travel nearly 1,700 miles on a single fueling and can choose where they will fill up or to where they will dispatch vehicles based on competitive freight pricing. Profit margins in trucking are measured by cents on the dollar, with .5-2% margins. CARB models a modest 7% reduction in oxide of nitrogen emissions from diesel sources statewide as a result of the California-only fuel standard, but does not consider the increase in vehicle miles traveled to avoid fueling in California.

Competition in the trucking industry is price focused. Shippers do not grant allowances for cleaner-burning fuels in their rate structure. Shippers select trucking companies first by price and then service. California trucking companies are paying more than those out-of-state competitors who do not fuel in California. Lack of a national fuel regulation is prohibiting California trucking companies from competing on a level playing field with out-of-state carriers during times of low fuel supplies.

California truckers have endured four major periods of price spikes where the disparity between California diesel prices and those of neighboring states has been upwards of 40-50 cents per gallon. The major four disruptions were: 1) during the introduction of

CARB Fuel (10/1/93), 2) during the introduction of California reformulated gasoline (4/1/96), 3) the explosions and fires at Tosco (Avon) and Chevron (Richmond) refineries (3/99), and 4) the historic August–September 2000 long term diesel shortage.

The cost of fuel is so price sensitive and the ease with which national carriers can change their fueling patterns is so cost reactive that legislative action was necessary to level the playing field on just one small component of the price - the sales and use tax. On October 2, 1997, AB 1269 was signed by Governor Wilson, at the request of California truck stop operators and local governments, as an attempt to return fuel purchases and their associated taxes back from the bordering states. The state was required to act on this small component of our single state fuel.

In addition, California's State Highway Account is short the following:

Federal Heavy Use Tax		$ 550
State Fuel & Sales Tax	**26.3 cents per gallon**	$13,150
Fuel (300 miles, 50,000 gallons) 18.3+7.5%		
Vehicle (100,000 @7.5%)		$ 7,500
Vehicle License Fee		$ 2,000
Vehicle Weight Fee (proposal to increase to $2417)		$ 1,700
Vehicle Registration Fee		$ 32
Total:		$50,644

Here is the financial impact of the California Interstate Based Fleet leaving the state:

Revenue Loss to California Highway Accounts

Scenario 1: $100,000 truck, 50,000 gallons used

State Highway Account - annual

- Federal Heavy Use Tax $ 550
  - (Caltrans)
- State Fuel Excise Tax $. .263* $13,150
- Weight Fees $ 1,700

Per truck contribution: $ 15,400

CA Interstate Loss (98.2%) $1,071,801,500
(Based on national growth slope)

CA Intrastate Loss
200,000 big rigs 10-97 152 $1,972,792,800

Annual total loss of truck flight
$3,044,594,300

Federal Trust Fund

- Vehicle Excise Tax (12%) $12,000
- Federal Fuel Excise $ .244 $12,200
- Tires (12%) $ 1,512

Per truck contribution $ 25,712

Federal Reporting to other states
Federal Vehicle Excise
$1,550,808,000 total
$ 172,312,000 annual average
The new trucks purchased outside the state since 1993

Annual losses:
Annual Federal fuel Excise $ 849,589,700
Annual Federal Tires Excise $ 128,406,600
$977,996,300

Annual total loss of truck flight
$1,150,308,300

DEREGULATION AND CARB DIESEL

From the 1950's until the 1980's the California trucking industry prospered under state and federal regulation. However, starting in 1974, there occurred a series of events that changed California trucking. Leading economists called for government to end the pricing regulation of the transportation industry. By 1990, federal and state deregulation was implemented. Teamsters-organized companies, once the dominant truckers in California, were in the minority and shrinking. California prices, once set on Teamster wage rates, fell to the labor cost of the lowest cost competitor.

Interstate trucking companies, long held out of California by the comprehensive system of state and federal economic regulation, moved into the heavily trafficked markets to further increase the competition and reduce prices. At this same time, California's economy plunged into a deep recession. By 1992, California's robust economy was in tatters and a cycle of consistent and ever-present competition on prices and service fell upon trucking.

In 1993, CARB diesel was introduced in California. While the incremental costs were estimated at 4 –6 cents per gallon, the price at the pump did not reflect the estimated manufacturing costs.

OPIS Diesel Price Index is a weekly publication designed to provide a general pricing overview of diesel fuel markets specific to the trucking industry. The weekly data produced by OPIS is used by the Department of Energy and the California Energy Commission for reporting average diesel fuel prices. This information appears on their individual web sites. Retail diesel fuel prices for September 5, 2000 hit record highs in California and demonstrate the inequities in price volatility across California's borders. Truckers don't buy average fuel prices:

California City	$Diesel Gallon	Bordering State/City	$Diesel Gallon
San Francisco	**2.06**	**Oregon/Portland**	**1.55**
Sacramento	**2.04**	**Arizona/Phoenix**	**1.68**
Los Angeles	**1.93**	**Nevada/Las Vegas**	**1.71**

Based upon the Truck Freight Cost Index established in 1990 during truck rate regulation by the California Public Utilities Commission, fuel price increases of this magnitude would require a surcharge of roughly 1 cent per mile for every 5 cent increase in fuel costs. That means a carrier in San Francisco would need to charge 10.2 cents more per mile to compete with a carrier who fuels in Portland, 7.6 cents per mile more for Arizona and 7 cents more per mile for Nevada. The District is required to use the lowest responsible competitive bid for its trucking services. Even the District would have contractual problems using local trucking companies and granting surcharges in times of price spikes and shortages.

Recommendation 2: Conduct an appropriate environmental impact and socioeconomic analysis on trucking

3. **In their failure to conduct an Environmental Impact Assessment and CEQA Analysis, CARB has failed to consider increased costs of fuels that can't be passed on to shippers, the relocation of companies outside the state, the increasing truck miles and the slow down or elimination of new truck purchases.**

The European Diesel Fuel Standard fails to accurately depict truck emissions and is missing any discussion or breakdown of trucks operating in California or the routes that interstate trucks are operating into nonattainment areas to avoid fueling in California. The environmental impact report should handle the emissions from interstate trucks that are directly attributed to this rule.

Since the State has no authority to require these vehicles to fuel in California and they travel freely throughout the state, the environmental impact report must reflect these vehicles changing fueling operations as significant. Emissions from trucks must be re-evaluated for the on-road sector based on those based in California and those out-of-state truck fleets that can't be regulated from other the US and other nations, specifically Canada and Mexico.

Increased vehicle miles traveled are not addressed in the Environmental Impact Report or CEQA Analysis.

During an inevitable price spike, companies able to keep their doors open will be using financial reserves regularly set aside for new truck purchases and maintenance just to keep their operations going. CARB must incorporate the delay of truck purchases and their environmental impact into the assessment. In addition, service intervals will be lengthened due to price spikes that will cause increased smoke emissions and NOx from vehicles operating outside factory specifications for emission controls.

CARB's alternative formulations allow standards to be set privately between the government and the refining industry while the trucking industry is denied information and knowledge of the standards. CARB is presently operating in a shroud of secrecy with respect to the alternative formulations that have been approved. This secrecy is allowing CARB to arbitrarily dictate what diesel fuel formulations are approved and sold in California.

CARB admits that the 10% aromatic standard is not offered for sale in California[1]. The current system is an underground regulation that benefits oil companies with refineries in California, who are given special standing to obtain approval for fuel formulas; only

[1] Also from CARB's July 3, 2001 response letter. See Appendix 1.

these companies can bring fuel in from other regions or countries which impairs the free market

A national fuel standard is the answer to breaking up this government sanctioned and protected mature oligopoly. A national standard and open market would bring fuel price parity to California truckers and eliminate the threat of boutique fuels in other states for interstate carriers. It is in the best interest of the public and trucking industry nationwide to advocate for a single national diesel fuel standard.

The unintended consequence of arbitrarily limiting fuel supply to just refineries with operations in California has caused increased and unnecessary diesel pollution statewide. CARB's model is not designed to capture the market behavior of what competitive trucking companies will do to avoid the high and volatile pricing inherent to California-only diesel fuel:

1) Since 1993, trucks drive more miles to purchase cheaper federal fuel. Fueling facilities are booming at California's borders as more and more trucks operate from just outside the state. More trucks come into California from out of state because they can offer cheaper service, even after they drive a few extra hundred miles to enter the markets.
2) A recent survey of intermodal carriers shows that companies will drive an average of 42.7 miles out of their way for cheaper fuel. In fact, there are many software and web-based programs designed to plan trucking routes around where to get the cheapest fuel. With one of these web-based programs, we found that a truck that gets 5.5 mpg with a 250 gallon fuel tank, when given destinations of 14 different cities throughout California from Phoenix, Reno, and Portland, the software only suggested a California fuel stop 3 times. All other suggested locations for fueling were out of state[2].
3) Diesel fuel prices in California average 25-40 cents higher than the national average. California shippers are not required to contract with California based trucking companies that use California fuel. The freight market rates don't reflect the inflated costs of California-only fuel.
4) CARB has no regulatory authority to prevent interstate trucks from using federal fuel and providing lower rates to California shippers. Interstate registration has grown to 1,439,3739 compared with just 423,000 intrastate trucks. There is an economic incentive to fuel up outside the borders of California and operate in California without fueling.
5) Companies based in California face economic hardship and an abnormal rate of bankruptcy. Truck turnover has slowed down as companies manage to stay solvent by keeping vehicles longer. Profit margins as low as 1-2% are now the industry norm.

[2] Our example is from www.mile.com by Prophesy Transportation Solutions, Inc. whose fuel price data is provided by T-Chek. See Appendix 2.

6) Of the 100 largest trucking companies in the United States, only three are based in California.[3]
7) Southwest Research Institute, an independent research organization, has found that the alternative formulations approved by CARB do not reduce pollution and increase emissions in later model (1994 +) engine technology.[4]
8) The national oil company representation, American Petroleum Institute (API) and the National Petrochemical & Refiners Association (NPRA), both support one national mirror image fuel standard for diesel fuel. NPRA advocates for national preemption with respect to diesel fuel.[5]

The California Trucking Association made national news fighting for the adoption of a national fuel standard. After successfully rolling back Rule 431.2 (the South Coast Air Quality Management District's 2004, four-county early diesel fuel reformulation) and advocating these standards nationally at the request of the California Air Resources Board (CARB), it looked like we were on track to a nationwide diesel fuel and price parity.

Unfortunately, the circumstances have changed. CARB is, once again, trying to establish a "California-only" diesel fuel formulation by refusing to eliminate their 10% aromatic standard, which federal diesel fuel (in 2006) is not required to have. In a letter to CTA and the Farm Bureau dated April 27, 2001, CARB says, "Rather than rescind part of CARB's fuel regulations, a better approach would be to convince U.S. EPA to adopt additional, equivalent standards."

Here is a chronology of our national fuel standard effort:

Early 1999 – CARB appeared before CTA's board and asked us to support EPA's proposed 30-ppm national diesel standard.

July 13, 1999 - CTA and CARB sign a joint letter to the U.S. EPA recommending *"a single specification be set for all motor vehicle diesel fuel."*[6]

July 29, 1999 – CTA submits comments supporting 15 parts per million diesel sulfur limits to take effect in 2006.

December 21, 1999 – Carol Browner, EPA Administrator finalizes the standards.

February 6, 2001 - CARB holds the 1st Fuels Workshop to discuss "updating diesel fuel certification fuel specifications" (translation = creating a state-only fuel for 2006)

February 28, 2001 - Christine-Todd Whitman signs the new standards.

March 22, 2001 – California Farm Bureau Federation and CTA send joint letter requesting a national diesel fuel standard that is a "mirror image" of California's fuel standard.[7]

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[3] Based on the "Transport Topics 2001-2002, Top 100" list from the July 22, 2002 issue that ranks the largest trucking companies in the United States. See Appendix 3.

[4] See Appendix 4.

[5] For evidence of NPRA's and API's position, see Appendix 5

[6] For a copy of this letter, see Appendix 6.

[7] For a copy of this letter, see Appendix 7

April 5, 2001 – CARB holds 2nd Fuels Workshop, not clarifying how a national standard is reached with the plans CARB proposes.

April 25, 2001 – CARB, when asked about the national fuel standard, responds that they are harmonizing and that they understand the difficulty for California carriers.

April 27, 2001 – CARB Chairman Alan Lloyd responds to the CTA/California Farm Bureau Federation joint letter, stating *"California simply cannot afford to lose the air quality benefits achieved by CARB diesel. We believe that seeking stronger national standards, similar to the World –Wide Fuel Charter's recommendations for advanced technology requirements, is a better approach.*[8]*"*

July 3, 2001 - From CARB's response letter to CTA:

"We maintain that it would be in the nation's and California's best interest that the U.S. EPA adopt a diesel rule that provides emission benefits that are comparable to those provided by California diesel requirements."

June 6, 2003 – CARB proposes to adopt the federal sulfur standard plus, cetane, density and viscosity standards that will further limit supply but, provide European diesel manufactures seamless transition for light duty diesel sales. National engine manufactures do not need a cleaner fuel and advocate for a national diesel fuel standard. The supply of diesel is predicated on light duty diesel fuel availability.

June 23, 2003 – AB 1767 is introduced to increase weight fees by 42% to make up for the shortfall in intrastate and CA-based interstate diesel truck registrations.

Recommendation 3: CARB must conduct the necessary Environmental Impact Statement and CEQA Analysis with respect to on-road truck emissions to reflect interstate users fueling with federal fuel, California-based trucks re-registering and fueling outside the State, increased VMT due to relocation of fleets outside the State boundaries, delay of truck purchases and maintenance intervals and the inevitable traffic from Mexico planned for 2005.

4. **CARB should delay this hearing and work with the State legislature to replace the European Diesel Fuel Standard with an incentive based program that collects state taxes or fees from fuel purchases or barrel fees to fund the Carl Moyer Program.**

CARB should work with the state legislature to collectively solve the truck registration problem caused by diesel price spikes.

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[8] The World-Wide Fuel Charter is a collective effort between the European Automobile Manufacturers Association, the Alliance of Automobile Manufacturers, the Engine Manufacturers Association, and the Japan Automobile Manufacturers Association. It was first established in 1998 (revised in 2000) to promote a greater understanding of the fuel quality needs of motor vehicle technologies and to harmonize fuel quality world-wide in accordance with those needs. CARB's recommendations are based on the World-Wide Fuel Charter's "Category 4" fuel quality standards. See Appendix 8.

The Senate Transportation Chair has asked CARB to delay the hearing to allow the legislature to evaluate the unintended consequences. Senator Torlakson, a member of the Senate Transportation Committee has also requested a delay and legislative oversight. The Assembly Republican Caucus signed a letter asking that CARB to supporting national changes to diesel fuel to directly reduce emissions, recommend a single specification be set for all motor vehicle diesel fuel and that refiners be notified of a specific implementation date. They have asked CARB to take no action on this issue thereby allowing the legislature time to conduct proper hearings at which all factors can be taken into consideration.

Moving ahead could hurt both the oil and trucking industries as modifications to refiners beyond the federal standard should not be initiated at this time.

Recommendation 4: Delay any adoption accept the nation mirror image standard until the state can evaluate the unintended consequences and remedy them.

5. CARB's Economic Model does not reflect the price volatility in the market and has failed to consider the economic theory of supply and demand. Average Cost estimates hide the price spikes making the model output incorrect with regard to trucking companies located in California.

The relationship between price and the supply/demand curve are taught in every high school and college in the nation. A brief review of the basic concepts:

Supply and Demand

"Supply and demand in a market interact to determine how much of something is sold and bought, and what the price is. The crucial ideas are that **supply and demand are determined independently**. The sellers determine the supply. The buyers determine the demand." In a free competitive market, which the States Attorney General questions even statewide of the oil companies, the price of diesel moves up or down until the amount supplied equals the amount demanded. When the price stops moving, you have what is called **equilibrium**.

"Excess demand and excess supply are important to an economic model because they encourage competition that tends to make the price change. Excess demand tends to induce competition among the buyers that force prices up. Excess supply tends to induce competition among the sellers that force prices down. Equilibrium is reached when there is no tendency for the price to move either way. At equilibrium there is no excess demand or excess supply.

Higher demand makes both the price and the quantity sold go up. Lower demand makes both the price and the quantity fall. "

Demand is the amount of a good that consumers are willing and able to buy at a given price.
Utility is the satisfaction people get from *consuming* (using) a good or a service.

Factors Influencing Demand

The amount of a good demanded depends on:

- the price of the good;
- the income of consumers;
- the demand for alternative goods which could be used (*substitutes*);
- the demand for goods used at the same time (*complements*);
- whether people like the good (*consumer taste*).

Supply

Factors Influencing Supply

Supply is the amount of a good producers are willing and able to sell at a given price. Supply depends on:

- the price of the good;
- the cost of making the good;
- the supply of alternative goods the producer could make with the same resources (*competitive supply*);
- the supply of goods actually produced at the same time (*joint supply*);
- unexpected events that affect supply.

A supply curve shifts only if there is:

- a change in costs;
- a change in the number of goods in competitive or joint supply; or
- some unforeseen event which affects production.

Market Price

At prices above the equilibrium (P*) there is *excess supply* while at prices below the equilibrium (P*) there is *excess demand*. The effect of excess supply is to force the price down, while excess demand creates shortages and forces the price up. The price where the amount consumers want to buy equals the amount producers are prepared to sell is the *equilibrium market price.*

Indirect Taxes and Subsidies

This has the effect of shifting the supply curve up vertically by the amount of the tax. The price does not increase by the full amount of the tax. This suggests that part of the tax is paid by the firm or government entity.

If subsidy has been given to the firm, this has the effect of making firms willing to supply more at each price and so shifts the supply curve downwards. The shift is equivalent to the value of the subsidy. Note that price falls by less than the full amount of the subsidy. This suggests that the firm keeps part of the subsidy.

Elasticity

Price Elasticity of Demand

Price elasticity of demand measures the responsiveness of demand to a given change in price and is found using the equation:
PED = Percentage change in quantity demanded/Percentage change in price
or PED = P/Q x Q/P
where P = the original price
Q = the original quantity and = 'the change in'

Table 1: Features of price elasticity of demand

Feature	Elastic goods	Inelastic goods
PED value	Greater than 1	Less than 1
A rise in price means	A larger fall in demand	A smaller fall in demand
Slope of demand curve	Flat	Steep
Number of substitutes	Many	Few
Type of good	Luxury	Necessity
Price of good	Expensive	Cheap
Example	Maestro cars	Diesel Fuel

Price Elasticity of Supply

Price elasticity of supply (PES) measures the responsiveness of supply to a given change in price.
PES = Percentage change in quantity supplied/Percentage change in price
or PES = *P/Q x Q/P*

Table 2: Features of price elasticity of supply

Feature	Elastic goods	Inelastic goods
PES value	Greater than 1	Less than 1
A rise in price means	A larger rise in supply	A smaller rise in supply
Slope of supply curve	Flat	Steep
The good is produced	Rapidly	Slowly
The time period is	Months	Days
The firm has	Large stocks	Limited stocks
Example	Screws	Diesel Fuel

Income Elasticity of Demand

Income elasticity of demand (YED) measures the responsiveness of demand to a given change in income:
YED = Percentage change in quantity demanded/Percentage change in income

If YED is negative then the good is *inferior*. People use an increase in income to buy less of this good and more of a superior substitute.

If YED is positive then the good is *normal*. Consumers use an increase in income to buy more of the good.

Recommendation 5: The State should incorporate standard economic models of supply and demand in a market interaction created by further limiting California's fuel market to determine how much diesel is sold and bought, and what the price would be if one of the few refineries selected for alternative formulation approval were to scheduled to maintenance or experience an accident or explosion.

California State Senate

SENATOR
DEAN MURRAY

July 17, 2001

California State Senate

SENATOR
KEVIN MURRAY

July 17, 2001

Chairman Alan Lloyd
California Air Resources Board
2020 L Street
Sacramento, CA 95814

Chairman William A. Burke
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765

Dear Gentlemen:

As Chair of the Senate Transportation Committee, I formally request that your agencies reject [illegible] proposing a fuel standard that is different than the standard adopted by the Federal Environmental Protection Agency (EPA) and the decision of President Clinton and approved by President Bush. This proposed agency EPA standard for diesel fuel is designed to reduce [illegible] in California, and it represents [illegible] agreed with diesel engine manufacturers to produce the cleanest diesel engines in California history. Specifically, the EPA standard [illegible] and truck engine manufacturers will be required to sell diesel engines that are 90 percent cleaner than current engines. The air quality benefits of the EPA standard are dependent on the use of ultra low sulfur diesel fuel. [illegible]

I have also asked that the CARB staff continue to work with the diesel industry to develop a national standard that uses technology to produce clean diesel fuel. The current CARB proposed standards for diesel fuel would require California refineries to produce a unique fuel that would [illegible] the supply of diesel fuel in California. Any proposed standard should be based on the best technology available and not [illegible] technology for light duty vehicles. I have no objection to a hearing being held by the Air Resources Board on the EPA standard, but I object to any postponement or hearing date previous to the Air Resources Board.

I understand you are working with the EPA regarding the [illegible] fuel issue. My preference and objective would be that the ARB Board [illegible] at the June 28, 2001 hearing, and [illegible] not be a response required by the Clean Coast [illegible] that allows the State to continue to consider [illegible] the economic and environmental consequences of this issue as well as [illegible].

July 9, 2002

Mr. Margo Oge
U.S. Environmental Protection Agency
Office of Transportation and Air Quality
2000 Traverwood Drive, [illegible]
Ann Arbor, MI 48105

RE: Control of CAA/OR emissions reductions for 2004 fuel requirements

Dear Mr. Oge:

The California Trucking Association (CTA) is a non-profit trade association representing nearly 2,000 private and for-hire carriers and support companies within California. Our members include both interstate and intrastate motor carriers, ranging from the one-person owner-operator to large commercial companies. Our average member is a family-owned business operating 15 or fewer trucks with 20 employees or less.

Trucks are driving unnecessary miles on California highways to avoid our high ground-level fuel. Trucks are leaving the state to diesel at a lower cost. 20% of the U.S. freight moves through California ports. Consequently, it will be [illegible] for truck populations in [illegible] to [illegible] to comply to [illegible] standards.

A brief look at the trucks on California's highways tells a compelling story:

Truck Trends	1994 CC	1999
CA Interstate Fuel Use	433,208	22%
CA Short Haul Intrastate	44,124	2%
Out-of-State Diesel Vehicles (1)	[illegible]	76%

Source: CA Department of Motor Vehicles

Although CTA may carry on a successful challenge on 1 to PTA, the burden will now [illegible] to [illegible] and Canadian carriers will be using uncontrolled fuel, [illegible] to the formula adopted by EPA. If California chooses to use a fuel [illegible] fuel standard. The fuel Gulf Mexico and Canada will [illegible] California [illegible] to [illegible]. This will [illegible] California fuel [illegible] to [illegible] and increase the California [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

July 8, 2003

Ms. Margo Oge
U.S. Environmental Protection Agency
Office of Transportation and Air Quality
Ariel Rios Building, 6406
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Denial of CARB waiver reconsideration for 2003 fuel specifications

Dear Ms. Oge:

The California Trucking Association (CTA) is a non-profit trade association representing nearly 2,500 private and for-hire carriers and suppliers operating within California. Our members include both interstate and intrastate motor carriers, ranging from the smallest owner-operators to large commercial companies. Our average member is a family-owned business operating 25-30 trucks with 30 employees or less.

Truckers are showing unnecessary zeal in California to extend our high priced diesel fuel. Truckers are blowing the skin on diesel at a rate which 70% of the U.S. freight moves through California ports. Congestion is at an all time high, [illegible] the most population of trucks listed in the [illegible] to operate [illegible].

A brief look at the maps on California's Highways tells a compelling story:

Total Trucks	1996	1997
CA Interstate Fuel Tax	431,098	11%
CA - Non Fuel Tax Interstate	44,129	1%
Out-of-State Based Vehicles	[illegible]	9%

Source: CA Department of Motor Vehicles

[illegible] CTA was party to a successful challenge to the FTA, the truckers will see many closed, unfortunately and Mexican and Canadian carriers will be using noncommercial fuel, unless in the formula adopted by EPA. If California chooses to use a fuel different than the national fuel standard, the fuel that Mexico and Canada shall not enter into CA. California will be economically and environmentally hurt. This will provide California fuel that meeting federal air quality standards and increase the California consumer [illegible]

[illegible] Oil Investment [illegible] Fax [illegible] [illegible]

July 9, 2003

Mail Drop Code
U.S. Environmental Protection Agency
Office of Transportation and Air Quality
Ariel Rios Building, South
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Control of CO2/GHG emissions reductions for 2008 Fuel Requirements

Dear Ms. Dye:

The California Trucking Association (CTA) is a non-profit trade association representing nearly 2,000 private and for-hire carriers and suppliers operating within California. Our members include both interstate and intrastate motor carriers hauling nearly every commodity transported by truck statewide and throughout the country. Our average member is a family-owned business operating 10-11 trucks with 30 employees or less.

Trucks are the only economically viable way for California to import and export goods. Trucks are hauling the vast majority of California's freight, including more than 90% of the U.S. freight that moves through California ports. Consequently, it is all the more important that California's trucking industry not be unduly burdened with cost increases or operational restrictions that will make it more difficult for California businesses to compete in the national marketplace.

As you know, most of the trucks on California's highways are comparatively newer

Total Trucks	1996	1999
CA Interstate Fuel Use	431,208	11%
CA - Non-Fuel Intrastate	44,119	1%
Out-of-State Fuel Use/Non-Fuel Use	3,470,143	89%

Source: CA Department of Motor Vehicles

Although CTA may carry on a successful challenge on the FTA, the truckers will now pay [illegible] additionally and likewise and Canadian carriers will be using conventional fuel, which is the formula adopted by EPA. If California chooses to use a fuel 300% and 1500 the national fuel standard, the fuel that Mexico and Canada must use under NAFTA. California will be [illegible] the environmentally [illegible]. This will penalize California [illegible] that [illegible] meeting federal air quality standards and [illegible] the California economy [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

Appendix B
Diesel Retrofit Verification Procedure
Board Hearing Date: May 16, 2002

April 2, 2003

Governor Gray Davis
State Capitol Building
Sacramento, CA 95814

Dear Governor Davis:

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. CTA is the second largest trucking organization in the world providing comprehensive policy, regulatory and legislative support to our member companies. Our members range from the one-truck operator to large international companies who serve the public through safe and efficient goods movement. CTA is writing on behalf of our member companies regarding California Air Resources Board (CARB) Executive Order G-03-006 (Retrofit Verification Procedure), which was submitted to the Office of Administrative Law (OAL) on March 28, 2003.

CTA maintains the same concerns with the Retrofit Verification Procedure that we have expressed since CARB introduced the regulation. The 5-year or 150,000 mile retrofit warranty proposed in the current version of the rule lacks consumer protection -- the end-user is no longer protected because of mandatory state modifications to engines. The proposed warranty for emission control devices triggers a reprieve from all liability for manufacturers and delegates all liability and responsibility to the consumer.

A 150,000-mile warranty is just over 10 months on a truck used for two shifts a day, yet the cost of the capital investment is not reflected in the length of the warranty. The proposed emission control devices are near the cost of a new engine, not comparable to historical emission control devices, and by themselves, not cost effective. Including 5 years in the same phrase with 150,000 miles is misleading and lacks any research regarding the operations of the trucking industry. A standard warranty of 150,000 miles or 1 year clearly does not reflect the actual cost of the emission control device, nor does it protect the end-user.

On May 16, 2002, the California Air Resources Board held a discussion at its Board Meeting regarding the Retrofit Verification Procedure (Item 02-4-3). CTA made specific requests at the meeting in regards to ECD warranty issues and were assured by CARB staff that they would follow-up on our concerns. CARB staff promises included (summarized from the meeting transcript):

1. CARB proposed to baseline the costs using the 150,000 mile warranty, but do a cost-effectiveness analysis for an extended warranty (300,000 mile) as well. (Pg. 86, lines 1-25, pg. 87 lines 1-4)

2. CARB promised to bring back the warranty issue before the Board if they decide it's feasible to push it up to another number. (Pg. 112, lines 3-24) This promise should have been included in the last version of the regulation but was not.

3. CARB offered to sit down with CTA and go over the warranty requirements for current diesel engines to tie them together with regard to after treatment technologies. (Pg. 113, lines 1-8) This was not done.

4. CARB again promised to add a cost-effectiveness estimate into the waste rule that would take into account extended warranties of 300,000 miles and more. (Pg. 113, lines 23-25; Pg. 114, lines 1-6) This was not included in the 11/26/02 draft of the waste rule.

5. CARB Board members made and approved a motion to direct the Executive Officer to follow through on the warranty issues as prescribed above. (Pg. 114, lines 9-14) The warranty specifications had not been modified in the January 29, 2003 version of the regulation.

6. The motion also included getting reports if 4% failure rate was beginning to occur. (Pg. 114, lines 15-25, Pg. 115, lines 1-2) Data on failures still have not been released to the end user.

CARB staff failed to follow up on these issues prior to the release of the January 29, 2003 version of the rulemaking and continued to specify the 150,000 mile warranty requirement. The regulation CARB submitted to the OAL office completely ignores consumer protection, placing all liability on the end user.

In addition, CTA believes CARB has not been forthcoming with the data to support the Retrofit Verification Procedure. The feasibility of the retrofit warranty depends on whether or not regulated diesel engines can maintain the exhaust temperatures necessary to operate the traps efficiently. On December 10, 2002, we requested the supporting data through the Public Records Act as it pertained to CARB's Solid Waste Vehicle Collection Rule. On December 19, 2002, CARB denied our request, stating the following:

> ...ARB may withhold records that are draft or preliminary. It was made clear at the workshop that the summarized data were preliminary and that the project is ongoing. The data are not yet complete, and they have not been reviewed, quality-checked, or otherwise finalized. In addition, the ARB finds that at this time, the public interest in withholding the records outweighs the public interest in disclosing the records.

During a meeting with CARB staff on March 25, 2003, CTA again requested the supporting data and learned from CARB that they were not planning to release it until May 9, 2003--the date the final rulemaking is being released for the final 30-day comment period. Again, we feel that our requests are being ignored and that we are being denied the right to evaluate the verification procedure based on the supporting data.

Sincerely,

Joel D. Anderson
Executive Vice President

May 14, 2002

Mr. Michael P. Kenny
California Air Resources Board
1001 I St.
Sacramento, CA 95814

RE: Adoption of the Diesel Emission Control Strategy Verification Procedure, Warranty, and In-Use Compliance Requirements

Dear Mr. Kenny:

The California Trucking Association (CTA) is opposed to the adoption of the Diesel Emission Control Strategy Verification Procedure, Warranty, and In-Use Compliance Requirements as they come before the Board on May 16, 2002. Of particular concern to the trucking industry are the insufficient and unacceptable warranty periods for the emission control devices (ECD). CTA has expressed concerns about warranty issues since CARB first proposed its verification procedure and disclosed plans to force certain sectors of the trucking industry to retrofit their fleets. However, CARB has seemingly ignored our concerns and continues to propose an unreasonable, almost non-existent warranty period.

For heavy-heavy duty vehicles, which are the vehicles operated by the average CTA member, the proposed warranty period on an ECD is 5 years or 150,000 miles. A CTA survey taken in April 2002 among California's petroleum carriers indicated that the minimum number of miles traveled per truck annually within California is approximately 120,000 miles, with the average truck traveling closer to 350,000 miles per year. This yields a warranty of just a little more than 5 months for the average petroleum carrier. Considering the general trucking population, including long-haul truckers, the annual miles traveled would increase, decreasing the warranty time period considerably. National engine manufacturers provide warranties that last through the first rebuild or 500,000 miles, yet manufacturers of ECDs are required to provide virtually no warranty on their devices.

On page 57, Section 7.3 of the Initial Statement of Reasons, CARB states the following:

> Engine manufacturers have expressed concern that the proposed warranty period would be inappropriate. However, manufacturers of diesel emission control systems are confident that their systems can meet the proposed warranty period. Additionally, users have requested longer periods to match expected useful life. Staff believes that proposed periods are appropriate. For strategies employed on in-use diesel engines a shorter period would not provide sufficient consumer protection, while a longer period would add cost to the process that could hinder implementation. Successful implementation of in-use strategies will depend on user acceptance. Staff believes that the proposed warranty periods will foster this acceptance.

The proposed warranty periods will not only hinder user acceptance of the devices, but also will cause fleet operators to avoid retrofitting older engines until they are forced to do so, leaving dirtier engines on the road longer. ECDs are unproven in long-term, daily trucking operations. If anything, it would be more appropriate to offer a longer warranty period now and reevaluate it once the ECDs have been proven reliable and effective in on-road use.

For carriers that do retrofit their engines, their engine warranty is subject to nullification by engine manufacturers unless they prove that the retrofit did not harm the engine. CARB has created a fatal flaw with regard to warranties where the end user is no longer protected due to mandatory state modifications to engines. The proposed warranties act as a reprieve from any liability for manufacturers and a delegation of all responsibility and liability to the consumer. This approach is harmful to the consumer, who needs to be protected from trap and engine manufacturers blaming each other.

The California trucking industry should not be responsible for ECD failure or damage that the devices may cause to their engines. CTA respectfully requests that the proposed warranty periods be reevaluated before the verification procedure is adopted by CARB. Attached please find a copy of our March 8, 2002 comments on the Proposed Airborne Toxic Control Measure for Diesel Particulate Matter from On-Road Heavy-Duty Diesel Fueled Residential and Commercial Solid Waste Collection Vehicles, which expresses in detail our concerns about the reliability of the devices and insufficient warranties.

Sincerely,

Stephanie Williams
Vice President

SRW:slc

Attachment

Cc: Winston Hickox, Secretary of Environmental Protection, CalEPA
Dr. Alan Lloyd, Chairman, CARB
Margo Oge, Director of the Office of Transportation and Air Quality, Federal EPA
Wayne Nastri, Regional Administrator, EPA Region 9
William Keese, California Energy Commission
Bill Lockyer, Attorney General
Vincent Harris, Governor's Office
Members of the California Air Resources Board

Joint Comments of the California Trucking Association and California Refuse Removal Council, Northern District, on the California Air Resources Board's Proposed Refuse Removal Vehicle Rule for Diesel-Fueled Engines (Environmental Waste Rule)

The California Refuse Removal Council (CRRC) is a non-profit association of independent hauling and recycling companies founded in 1952. Its Northern District is comprised of more than 50 companies providing sanitation services throughout northern California. The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. CTA is the second largest trucking organization in the world providing comprehensive policy, regulatory and legislative support to our member companies. Our members range from the one-truck operator to large international companies who serve the public through safe and efficient goods movement. CTA and CRRC support the efforts of the California Air Resources Board (CARB) in reducing particulate emissions from heavy-duty, on-road diesel vehicles as long as it is technologically and economically feasible for California trucking companies. CTA and CRRC jointly oppose the Proposed Refuse Removal Vehicle Rule for Diesel-Fueled Engines (Environmental Waste Rule).

CARB has the opportunity to level the playing field for the California trucking industry by harmonizing fuel standards with the federal EPA. Today we are paying considerably more for diesel than our bordering states. The Environmental Waste Rule further exacerbates the diesel fuel price and supply problem in California for all vehicles involved in the transportation of liquid and solid waste products, a much more expansive population than neighborhood garbage trucks.

This will have a crippling effect on California-based trucking companies that move all forms of waste. The cross media impact this rule will have on the recycling industry is significant. CARB should carefully consider the impacts this rule will have on the state's recycling effort.

California companies will be forced to delay new truck purchases and instead use new vehicle purchase monies to retrofit older equipment scheduled to be retired in the near term. This ultimately slows down new truck purchases and forces them to use older equipment longer. The Environmental Waste Rule will have an overall negative impact on California's State Implementation Plan (SIP) for ozone because it will slow down truck turnover. We would request that EPA evaluate California's SIP for conformity based on the adoption of this rule.

While we carefully support reducing particulate emissions from the on-road sector, we ask that CARB look beyond models and technology forcing emission standards to economics and market behavior. Only then will the California trucking industry be able to purchase new vehicles with cleaner emissions. We carefully support retrofit of noncompetitive trucking operations where the additional costs of after-treatment devices and boutique fuels can be passed along to the shipper or user. Unless the Environmental Waste Rule is

voluntary or subsidized and provides for a national fuel supply, we are opposed to any such mandate.

Our comments are preliminary as the Environmental Waste Rule is provided only in concept, not in regulatory or rulemaking form. Additional comments will be provided should a hearing on this issue take place.

1. The Environmental Waste Rule requires a subgroup of trucking companies to use a speculative fuel supply in 2003.

According to the draft rule proposed by CARB, the rule applies to refuse removal vehicles as defined in Title 42 U.S.C.A. Chapter 82 - Solid Waste Disposal Section 6903 (28), which states:

> The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

This broad definition applies to at least, and likely more than, 191,404 California registered vehicles identified by the California Highway Patrol as waste haulers. Keep in mind that the entire population of California registered heavy-duty trucks is less than 400,000 vehicles. The vast majority of these trucks, defined by CARB under the Environmental Waste Rule, would be competing with interstate trucks. These are trucks that do local garbage collection as well as those that haul solid, semisolid or liquid wastes, oil filters, appliances, storm water runoff, tires or manure, to name just a few products. The name selected by CARB for the Environmental Waste Rule, "Public Workshop Regarding New Emission Standards For In-Use Heavy-Duty Diesel-Fueled Refuse Removal Vehicles," is misleading, arbitrary and capricious. Notification of all segments of the trucking industry is required under California law.

Recommendation 1: Withdraw the proposed Environmental Waste Rule.

2. **The Environmental Waste Rule requires the use of a boutique fuel that is not required for sale in California. Two oil companies would control the price and supply of diesel fuel with no regulatory standards or supply guaranteed.**

Diesel fuel is the lifeblood of California goods movement. In late 1988, CARB adopted a California-only diesel fuel standard and set a compliance date of October 1, 1993. The regulations require that all motor vehicle diesel fuel sold within the state must not only meet the federal low-sulfur requirements, but must also meet the aromatic equivalency of no more than 10%. The cost of a California-only diesel fuel was estimated by CARB at no more than 6 cents per gallon more than federal diesel fuel. As you know, price spikes due to supply shortages and pricing by oil companies acting as if they are operating in a competitive market have plagued trucking companies who are forced to purchase this fuel.

Competition in the trucking industry is price focused. Shippers do not grant allowances for cleaner-burning fuels in their rate structure, but rather select trucking companies first by price and then service. California trucking companies are paying more than those out-of state competitors who do not fuel in California. Lack of a national fuel regulation is prohibiting California trucking companies from competing on a level playing field with out-of-state carriers.

California truckers have endured four major periods of price spikes where the disparity between California diesel prices and those of neighboring states has been upwards of 40-50 cents per gallon. The three major disruptions were 1) during the introduction of CARB Fuel (10/1/93), 2) during the introduction of California reformulated gasoline (4/1/96), 3) the explosions and fires at Tosco (Avon) and Chevron (Richmond) refineries (3/99), and 4) the August 2000 fuel shortage.

The cost of fuel is so price sensitive and the ease with which national and interstate carriers can change their fueling patterns is so cost reactive that legislative action was necessary to level the playing field on just one small component of the price - the sales and use tax. On October 2, 1997, Governor Wilson signed AB 1269 at the request of California truck stop operators and local governments as an attempt to return fuel purchases and their associated taxes back from the bordering states. The state was required to act on this small component of our single state fuel. Imagine the cost of this fuel if we allowed just two oil companies to operate within the unregulated market provided for in the Environmental Waste Rule.

California carriers represent 9.1% of the 1,354,447 big rigs (over 33,000 lbs.) registered to operate on our nation's highways. The fuel specifications were adopted to reduce air pollution, yet there is no mechanism in place to stop the free market from transferring fuel purchases to a more reasonably priced, available fuel supplies outside the borders of California.

From the 1950's until the 1970's the California trucking industry prospered under state and federal regulation. However, starting in 1974, a series of events occurred that changed California trucking. Leading economists called for government to end the pricing regulation of the transportation industry. Federal and state deregulation was implemented by 1990 and teamsters-organized companies, once the dominant truckers in California, were in the minority and shrinking. California prices, once set on Teamster wage rates, fell to the labor cost of the lowest cost competitor. Interstate trucking companies, long held out of California by the comprehensive system of state and federal economic regulation, moved into the heavily trafficked markets to further increase the competition and reduce prices. At this same time, California's economy plunged into a deep recession. By 1992, California's robust economy was in tatters and a cycle of consistent and ever-present competition on prices and service fell upon trucking.

In 1993, CARB diesel was introduced in California. While the incremental costs were estimated at 4 cents, the price at the pump did not reflect the costs. The economic consequences for the subgroup of trucking companies captured by this rule are real and significant. Oil companies would go from a regulated oligopoly, as defined by the

California Attorney General, to a monopoly with no standards whatsoever. This is not in the interest of the public, who would pay the increases in cost if there were a level playing field for truckers, or to the regulated community who would be required to absorb these costs or go out of business.

The additional cost of 15ppm sulfur diesel is accurately estimated at $0.25-0.75 per gallon, which is documented by the California Department of Transportation in their competitive bid process reflecting the economics of scale of their large purchases. In 2003, the boutique fuel necessary to enable the emissions standards required by this rule cannot be transported through the pipeline. Therefore, the delivery system would consist of dedicated tanker loads (laden with a 9,100 gallon standard payload) being dispatched from two refineries in the state producing the boutique fuel. Since the proposed rule includes all areas of the state, this system would place thousands of additional tanker loads per day on our highways with the daunting task of delivery product in a timely manner to remote regions. This is a risky proposal that will give oil companies windfall profits and hurt the public. In addition, the prices reflected through allowing the oil companies to game the market will be seen by the nation as the cost of 15 ppm sulfur diesel fuel and risk the adoption of a national clean diesel fuel standard. Imposing a 15ppm fuel standard on environmental waste haulers three years before the national fuel standard is not well thought out and should be reviewed by both the California Energy Commission and the California Attorney General.

Recommendation 2: Harmonize fuel standards with the national fuel standard in 2006.

3. Retrofit for California based fleets would be fatal to their businesses. Incremental costs are significant and cannot be recovered by California companies.

CARB is unable to control interstate traffic and the corresponding emissions inventory from out-of-state diesel engines and should not add additional costs to California-based competitive operations. Retrofit of heavy-duty engines is estimated to cost up to $9,500 per engine. This does not include the cost of taking a truck out of service, the incremental costs of using 15ppm sulfur diesel fuel, and the fuel economy penalty from using a particulate trap. Many of the trucks on the road today aren't even valued at $9,500. This type of cost burden would be catastrophic for most California environmental waste transporters.

The draft Environmental Waste Rule proposed by CARB provides an exemption for small fleet operators. This exemption is an admission that the rule is not economically feasible. Furthermore, contractual obligations for storage and pickup of liquid, solid and semi-solid waste place companies in legal peril should their vehicles fail to meet the health and safety requirements of their contracts. For example, Title 14 of the California Code of Regulations Section 17410.1 requires, "facilities shall remove solid waste within 48 hours from the time of receipt." An unreliable fuel delivery system and unknown equipment performance using the mandated "traps" have the potential to create an unacceptable risk to public health and safety.

CTA recently adopted an alternative strategy for reducing particulate matter from environmental waste haulers as well as other vehicles. Our proposal would retrofit all vehicles in the state by 2007 through incentives such as grants and tax credits, and would promote greater compliance with the regulation before the national fuel standard phase-in of January 2007. CTA's proposal takes the following approach:

A. Federal Tax Credit for Retrofit: California trucking owners who voluntarily retrofit their vehicles will be given federal tax credits to offset the cost of the retrofit.
B. Early Retirement Grants and Tax Credits: Refuse removal companies that voluntarily retire vehicles in favor of purchasing new vehicles will be given grants or tax credits.
C. Prohibited Registration of Pre-1992: Refuse removal companies will not be able to register pre-1992 vehicles after January 1, 2007.

The benefits of this program are immediate as companies rush to retrofit to get the tax credits before the sunset date of January 2007. After 2007, retrofit would be required and no tax credits or grants would be offered. This program would insure that retrofit technology would be available, provided by reputable companies with certified equipment prior to regulatory action. The economic consequences of retrofit, specifically the boutique fuel issue, would be resolved as it would coincide with the national 15ppm sulfur diesel standard. The price and supply of fuel will no longer be an issue to slowing down new truck turnover as diesel fuel prices will be more level throughout the nation.

Recommendation 3: CARB should adopt CTA's proposal, which would promote compliance from environmental waste haulers using incentives rather than unreasonable regulations.

4. **Retrofit requirements for environmental waste haulers will nullify warranties on heavy-duty diesel engines, resulting in increased costs for affected companies.**

The liability for damage to vehicles under warranty and vehicles not under warranty that suffer catastrophic failure due to the back pressure increases related to certain retrofit devices is unclear. This issue must be thoroughly evaluated with test data on each diesel engine cycle, especially those cycles which use power take-off for functions other than moving the vehicle (neighborhood garbage trucks, cement trucks for example).

Warranty on the certification of emissions standards and who would be responsible for a trap that fails have not been discussed.

Recommendation 4: Provide a detailed analysis on responsibility, warranty issues and legal issues surrounding certification and recall.

5. **The reporting requirements outlined in the rule are unreasonable, unnecessary, and do not improve air quality.**

California trucking operations are currently subjected to a variety of air, water, and hazardous waste inspection and reporting requirements, including BIT audits, DOT audits, Certified Unified Program Agency inspections, and State Water Resources Control Board permitting and inspections. The proposed rule imposes unnecessary and unwieldy reporting requirements that will only serve to make it more difficult for owners to operate their businesses within California.

Any bureaucracy attempted for California's truck population is opposed by CTA. Reporting requirements lead to fees, inventories or audits that are duplicative when existing truck regulation in the state of California is considered. Should retrofit be required under California law for any segment of the trucking industry, enforcement should be handled by agencies already inspecting trucks such as the California Highway Patrol. We are opposed to increased and duplicative regulation by government agencies with respect to California located terminals and the trucks that are housed here.

Recommendation 5: CARB should eliminate all reporting and paperwork requirements from this rule.

6. **The exhaust emission standards proposed are unproven and technologically infeasible using current certified technology and evaluating current test vehicles.**

The rule proposes two methods of meeting its exhaust emissions standards:

a) Using an ECS verified under the Retrofit Verification Procedure; or
b) Achieving an 85% reduction of diesel PM emissions from the engine certification level, or 0.01 gr/bhp-hr diesel particulate matter emission level through an ARB certified replacement, repower, manufacture, or fuel and/or engine change.

Currently, the technology described in the rule is neither certified by CARB, tested for durability nor documented as emissions control technology fit for all diesel engines in the state. Trucking companies are being required to "figure out" how to reduce emissions from Pre-94 engines which engine experts and after-treatment experts cannot understand. CARB is required to demonstrate that the technology is feasible and won't hurt our engines. Only then can this regulation be considered with thorough test data regarding retrofit on a random sample of all diesel engine technology. The test data collected by CARB demonstrates that retrofit does not work on older vehicles. Therefore, CARB is asking the trucking industry to become retrofit manufacturers and experts instead of freight forwarders.

CARB is aware of problems with almost 50% of the in-use engine population and continues to arbitrarily mandate unproven, technologically infeasible standards on truck owners. This is equivalent to mandating the passenger car owner to achieve 85% reduction in hydrocarbon emissions with devices that are speculative, unproven and could cause catastrophic damage to in-use engines. CTA and CRRC members are the public. When it

comes to our vehicles, we expect CARB to do their homework before proposing or adopting regulations.

CARB diesel was untested before the October 1993 introduction and trucking companies had to be reimbursed by the state for damage to trucks caused by CARB fuel. CARB should stop forcing technology on end users and work with the original engine manufacturer to see if retrofit is technologically feasible for all engines. The adoption of this rule has the potential to leave the trucking industry bearing the cost of CARB's technology-forcing regulations that were unproven, untested and infeasible.

Recommendation 6: CARB should propose no further regulations which mandate technology that is not available, not certified, and insufficiently tested on all engine models.

7. CTA and CRRC are opposed to the compliance provision of the Environmental Waste Rule.

Standards for vehicles that require no visible emissions do not allow for in-use failure. Performance standards for the operation of this subgroup of vehicles are cost prohibitive and extremely burdensome. This rule creates an unnecessary government bureaucracy for 1-2% of the trucks on California roads. The compliance provision of the rule is overreaching, arbitrary and needs to be reconsidered to avoid the same issues that came out of the Smoke Inspection Program--issues which ultimately suspended the program until the details could be worked out by the Society of Automotive Engineers.

Recommendation 7: Eliminate the compliance provision of the Environmental Waste Rule.

8. The exemption provisions for technical infeasibility are problematic and demonstrate the program doesn't work. The problem is transferred to the truck owner to solve.

Retrofit of heavy-duty engines is either feasible for all engines or not feasible at all. Companies can't be required to spend money and time trying to figure out how to retrofit each truck. This part of the rule is very problematic because it demonstrates that CARB has no confidence in its own ability to certify retrofit equipment in a timely manner. It sets the standard for freight forwarders, not engine manufacturers, to meet or figure out for themselves.

Recommendation 8: CARB should not mandate emissions standards for existing vehicles and expect truck owners to meet them.

9. **The Environmental Waste Rule will slow down and discourage new engine purchases, impacting the state's ability to comply with the Ozone SIP and estimated NOx reductions.**

This rule changes the truck capitalization schedules and redistributes money from new truck purchases into maintenance budgets. This is a serious issue CARB must consider. CARB is proposing to change truck purchase investments for a large segment of California-based carriers. Reducing diesel particulate matter at the expense of NOx is problematic for our SIP.

Recommendation 9: CARB should adopt CTA's Board approved program of incentives.

Appendix C

Control Measure for Diesel Particulate Matter from On Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles

Board Hearing Date: September 25-26, 2003

Comments Before the California Air Resources Board on theProposed Control Measure for Diesel Particulate Matter from On Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, September 24, 2003

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. CTA is the second largest trucking organization in the world providing comprehensive policy, regulatory and legislative support to our member companies. Our members range from the one-truck operator to large international companies who serve the public through safe and efficient goods movement. The California Trucking Association (CTA) is again submitting comments regarding your proposed Solid Waste Collection Vehicle Rule. This is our 5th submittal of comments on this topic. We are opposed to this proposal in its entirety, as it is still an unworkable, economically damaging control measure. Numerous meetings with CARB staff have led to no movement and instead we find that CARB has postponed a 15-day change to regulations that would eliminate all compliance and reports for municipalities. This assures the waste haulers that passing the environmental compliance cost through to the consumer is impossible.

When CTA, CRRC, and representatives from solid waste collection companies met with CARB staff earlier this year, we felt we had made progress and had at least somewhat successfully conveyed the hardships that this regulation will cause the industry. The solid waste collection industry is completely at the mercy of the municipalities due to set rates and contracts that are already in effect. The latest version of the regulation shows little effort by CARB to make this a workable mandate, despite our past and current objections. CTA believes that this regulation is potentially disastrous to the solid waste collection industry, and still opposes the measure in its entirety for many of the same reasons as we have stated throughout the rulemaking process. The 15-day changes to the proposed rule dated 9-16-03 demonstrate the bad faith staff has worked under in "letting free" the municipalities.

Our issues in summary are:

1. **The California Air Resources Board (CARB) is preempted from requiring modifications on new engines by the Clean Air Act.**

First and foremost, we believe that the issue of Federal preemption has not been addressed. The authority to modify a new engine is pre-empted by federal law until such time as the first rebuild. The preemption provisions of the Clean Air Act (CAA) do not allow states to adopt or enforce emission standards on new motor vehicles or engines. Your agency has limited authority to adopt emission standards for new motor vehicles, but only if certain conditions are met. Those conditions include adequate "lead time and stability" for any "new" engine or vehicle standard. In order to proceed with this rule, your agency would need to obtain a waiver of federal preemption from the EPA.

Engine manufacturers and trained professionals make and repair our engines. Companies who make retrofit devices must be coordinated through engine manufacturers who need and have legal standing to require lead-time and stability to integrate technology in a safe and cost-effective manner. If national engine manufacturers are provided 4 years lead-time to build

engines with lower emissions, trucking companies should not be saddled with only a year. This action is arbitrary and capricious.

National engine manufacturers are given three years of stability after an engine standard rule is implemented. Under your proposal, solid waste collection companies would be given no stability and an expensive and constantly moving target. This proposal demonstrates that CARB has lost hope of working with national engine manufactures and would prefer to have trucking companies be responsible for the products that they purchase. This method of regulation is anti-consumer and irresponsible. The variation in cost of retrofit devices indicates that neither the market nor the technology is mature. This regulation forces the solid waste collection industry to serve as a testing ground for emission control device (ECD) manufacturers and bear those development costs.

CTA fails to see CARB's regulatory authority to mandate retrofit of used motor vehicles. CARB cites Health and Safety Code Sections 39002, 39665, 43013, and 43018 as granting regulatory authority for retrofit. However, none of the cited sections give CARB authority to mandate retrofit. Additionally, Section 43600 specifically prohibits installation of devices on used motor vehicles unless mandated by statute, and Section 73001 specifically requires that any significant modification of the engine shall be made during regularly scheduled major maintenance or overhaul of the vehicle's engine.

Recommendation 1:

Allow adequate lead-time for the solid waste collection industry to comply with the mandates outlined in this regulation. Demonstrate the delegated authority to modify new and used engines in California statute.

2. **Nullification of industry standard warranties, which extend from 500,000 to 1,000,000 miles.**

Your proposal is subject to due process concerns in regards to the warranty issue. Since retrofit will actually be the least expensive of all options in the regulation, most affected companies will likely choose this option. In the current economic climate, many trucking operations, including solid waste collection companies, are operating on a very small profit margin. Consequently, there isn't a large market for aftertreatment devices that could nullify engine warranties and cause truck failure. During the verification procedure workshops, your staff was directed to remedy the warranty issues inherent in the verification procedure with this rule. There has been no improvement on this issue from one iteration of this regulation to the next, leaving the industry skeptical of all retrofit technologies.

In addition, in Section 2021.2 (b) (3) this regulation allows the manufacturers and dealers of ECD's to decide if an engine's warranty will be jeopardized if their technologies are installed. This gives those who make profit from the technologies the sanctioned ability to make their own market by agreeing that their devices work for certain engines, regardless of whether testing has been done by neutral parties. At no point have the ECD manufacturers been directed or regulated

to work with engine manufacturers to solve the warranty issues, thus leaving all liability to the end user.

Recommendation 2:

Require by regulation the ECD manufacturing industry to work with the smallest and least capitalized economic unit in the business relationship on harmonizing warranty periods. Engine manufacturers should verify that each device works and will not cause engine failure before CARB verifies the technology and requires the end user to purchase it.

3. Transfer of new engine modification liability to the end-user.

CARB has created a fatal flaw with regard to warranties where the end user is no longer protected due to mandatory state modifications to engines. Your proposal is a reprieve from any liability for manufacturers and a delegation of all responsibility and liability to the consumer. This approach is harmful to the consumer, who needs to be protected from trap and engine manufacturers liability. The consumer is placed in the crossfire of "who is responsible," which will surely result in finger pointing by all manufacturers of these required modifications on engines, particulate traps, backpressure devices and all the other bells and whistles created by a flawed government mandate. Your proposed control measure is unprecedented in California liability laws and regulations.

CTA commented extensively during the regulatory process for the Retrofit Verification Procedure regarding warranty issues and end-user liability. At the May 16, 2002 CARB Board Meeting, CARB staff was specifically directed by the Board, who modified the rule for the 15-day comment period, to work with the end-user to resolve these issues. While CARB asked that the verification procedure be pushed forward and allow warranty issues to be handled in the cost effectiveness portion of the first fleet rule, this regulation is being pushed forward without any progress or modifications to the warranty requirements. Here we are at the first fleet rulemaking, where the cost effectiveness of 150,000, 300,000, and 500,000 mile warranties are simply not addressed. The issues discussed, in detail, were as follows (taken from the official meeting transcript):

- CTA gave detailed information during the meeting regarding diesel engine warranties and truck costs after repeatedly providing it in written comments. CARB has the information, but continues to ignore the problem. Stephanie Williams, CTA Vice President, dialogue with CARB Board, pg. 66, lines 3-20, pg. 67, line 1 through pg. 72, line 17:

> I am Stephanie Williams. I'm representing the California Trucking Association. We're opposed to the verification based on the warranty issues.
> I want to go over a few things with you that I think will bring some light to this. And let's start with the emission factors for PM for trucks.
> A 1987 truck has one-gram brake-horsepower-hour

PM. The cost of the market value of that vehicle right now is $2,500.

The '91 standard would be .6, I believe -- I think .6. Bear with me on these. I don't have them memorized. The cost of a '91 vehicle fair market value today is $5,000.

A '94 engine, which is the latest best available technology for PM control sold on the certification, is $10,000 for a heavy-duty truck.

And a '98 vehicle today sells for between $35,000 and $45,000, depending on if it's a sleeper unit or not.

And this is a consumer-protection issue, and I believe this proposal does not protect the consumer.

Let's start with petroleum tank trucks. A petroleum tank truck -- we did a survey of our members. Surveys are still coming in because we're looking for economic data. But the average petroleum tank truck goes between 120,000 miles a year and 390,000 miles a year; 390,000 miles a year is the 90th percentile on our data. So let's just take the 90th percentile and work from that.

That would mean in months the warranty on a particulate trap for, let's say -- let's put a particulate trap on a '94 petroleum tank truck. Reasonable. It would cost for 350, 450 power, $8,500; if you put the back pressure device to gauge if there's a problem, let's say $10,000. So the trap is the equivalent to the price of the entire truck. And we're asking to have a warranty on the device, which is four, five, six months. That's unacceptable consumer protection. You wouldn't do that to the end user of a car. You wouldn't tell Stephanie Williams that she has to put a catalyst on her car that costs the same as her car, because it would be inappropriate cost effectivewise.

CHAIRPERSON LLOYD: What's the warranty on the engine?

MS. WILLIAMS: The warranty we -- warranties that

are sold, the market warranty is 500,000 miles. We get million mile warranties. You pay extra for a million mile warranty. So -- and I believe -- when we were working on the federal implementation plan there were 290,000 miles

emission control warranties and 435,000 mile emission control warranties, depending on the weight of the vehicle.

And those are required by federal EPA, that the engine manufacturers have to make sure that their emission controls on these trucks last for that period of time.

So why would we bring in this new thing -- and we're talking about retrofitting brand new vehicles. Why would we bring in a warranty that has, you know, six months.

And then, on top of that, if you have a brand new vehicle that's under warranty, all right, and you put on a particulate trap -- and let's say accidentally you are using your vehicle in a different way, it used to be stop and go, so they put the particulate trap on, but your driver decides he's going to go across town on the freeway, maybe he wants to go to San Diego to pick something up that's a different type of operation.

So the particulate trap has problems, back pressure, catastrophic engine failure, who's responsible? The particulate trap manufacturer will point to the engine

manufacturer; the engine manufacturer will point to the particulate. The end user is stuck with an invalid warranty. So you've taken away the warranty that he purchased, the 500,000 mile warranty, and left him with the bag. This is unfair consumer protection. It needs to go back to the drawing board and look in our favor.

It's nice that the engine manufacturers are supporting giving us all the liability and it's nice that the trap manufacturers are supporting giving us the liability. But I'm asking you, as the Air Resources Board, to protect the end user. We are not guinea pigs. We are product purchasers, just like the public, just like cars, and we need your protection. And this rule, as written, does not protect us. And it will end up in the L.A. Times. I'll call them myself. I mean, this isn't a fair thing.

It doesn't work to put the liability, the responsibility on the end user, because the end user has no way to protect themselves against something like this. So what you need to do, in my opinion, and the position of the California Trucking Association, is to take the warranty to 500,000 miles. And we would not have a

problem with it. And make sure that the liability and responsibility in any type of catastrophic failure goes where it belongs, with the engine manufacturer or the trap

manufacturer. And it doesn't have to go to court to decide whose fault it was when the engine does have problems, that we're not stuck with the bag and then have to pay legal fees on top of that to determine whether it was the engine manufacturer's problem or the trap manufacturer's problem. Clearly, state the liability.

There is a -- on page 57, section 4.3, it says -- I think that based on the staff report, this would work to have a 500,000 mile warranty.

> "Engine manufacturers have expressed concerns that the proposed warranty period would be inappropriate. However, manufacturers of diesel emission control systems are confident their systems can meet the proposed warranty period. Additionally, users have requested longer periods to match expected useful lives. Staff believes the proposed periods are appropriate. For strategies employed in in-use diesel engine, a shorter period would not provide sufficient consumer protection."

Well, I think four or five months is not sufficient consumer protection, you know. 500,000 miles, possibly one or two years, would be sufficient consumer

protection.

"Successful implementation of in-use strategies will depend on the user acceptance." You're right, we don't accept this. We don't feel protected.

So we would ask that you take this rule back or extend the warranty period to something that is similar to cars and similar to the cost of the retrofit devise based on the value of the vehicle. And neither of these are represented in the proposal, and they should be.

This is the first step of regulating and requiring controls on diesel vehicles. If this is not tied with the waste rule and the petroleum carriers rule,

both rules will fail. This could be a catastrophic disaster.

And it happened once already. Need I remind you of Jerry Brown's experience with catalytic converters. And they were a lot less expensive than what we're talking about here.

CHAIRPERSON LLOYD: They weren't catalytic converters.

MS. WILLIAMS: Well, NOx catalysts or whatever they were. Retrofit devices -- I think retrofit device is the proper word. But the warranty issue is inappropriate.

And talking about environmental justice, this should be in the environmental justice arena when you look

at the value of these vehicles and the people that are buying them. They need to be protected by the Air Resources Board.

CHAIRPERSON LLOYD: Well, remember, Stephanie, the goal here is to reduce exposures to diesel particulates. That's the thrust. Clearly, you make some suggestions that we're not doing well enough in certain areas. But I think we're both on the same page of trying to reduce public exposure.

MS. WILLIAMS: This doesn't have anything to do with reducing public exposure. Your -- the warranty, the very -- the first open door doesn't protect the consumer. I mean there's no public exposure reductions if a trap gets on the last four months and comes off. I mean, it's actually the opposite, because money that could have gone into new vehicles will be going into traps. You're going the opposite way.

- CTA once again requested that approval of the verification procedure be delayed until the first retrofit regulation was ready for hearing due to the unresolved warranty issues. Pg 73, lines 9-13:

Actually, it would make more sense to put this over until you bring up the first rule, and look at it with the waste rule, look at it with the first rule. It would make more sense to do that so the Board can get an adequate idea of what they're really doing.

- CARB staff acknowledged the need to do further cost-effectiveness analysis, considering the warranty issues, when the first fleet rule was brought before the Board. Executive Officer Kenny, pg. 74, lines 16-25, pg. 75, lines 1-6:

> With regard to the cost effectiveness, I think that is a secondary issue. And we have not spent a lot of time talking about the cost effectiveness of this particular procedure for the simple reason that there really are no emission reductions specifically associated with the procedure. The emission reductions will come into play when we do do the further rules, the ones that Stephanie was referring to. If we do the waste trucks, if we do the cargo tank haulers, things like that, then we'll be looking at cost effectiveness and making determinations
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> as to whether or not the particular equipment is cost effective in this particular application.
> And those are the kinds of issues that will have to be considered by the staff and by the Board when it makes its ultimate determination as to whether to go that direction.

- CARB Board members expressed concern about the warranty issues, pointing out the need to protect the end user. Board Member Burke, Pg. 79, lines 17-25, pg. 80, lines 1-9:

> In this particular case, I'm really very concerned about having those truck drivers on the end of 100,000 mile warranty -- or 150,000 -- I'm sorry, 150,000, because it puts them out there. I mean, now, if you were talking about 300,000, 500,000 miles, I could understand that. Because when you talk about these traps and how that stuff -- you know, when Mr. Kenny says, "Well, you know, we never leave them out there. The trap manufacturer will reimburse them"; well, all those people
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>
> who bought Zerex[sic] traps, I want to know when they're going to get their money back; because, you know, those people don't exist anymore.
> CHAIRPERSON LLOYD: Except they weren't certified.
> MOBILE SOURCE CONTROL DIVISION CHIEF CROSS:

7 Yeah, they were not certified and couldn't --
8 BOARD MEMBER BURKE: But I guarantee you there's
9 going to be examples similar to that.

- CARB agrees to baseline the costs using the 150,000 mile warranty for the solid waste collection rule, but to also do a cost-effectiveness analysis for an extended warranty (300,000 mile). Pg. 85, lines 23-25, Pg. 86, lines 1-25, pg. 87 lines 1-4:

23 EXECUTIVE OFFICER KENNY: Well, actually -- I'm
24 not sure I have a question as much as I was going to
25 follow up on a lot of the testimony and maybe propose a

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1 semi-solution, which is that -- you know, it seems that
2 it's really a matter of cost. And what we have basically
3 been trying to do is provide a verification number of
4 150,000 miles and use that basically as the baseline when
5 we ultimately do our cost effectiveness determinations
6 when we propose regulations to the Board later on.
7 If we were to propose a 300,000 mile warranty, a
8 450,000 mile warranty, obviously the baseline costs will
9 go up and consequently cost effectiveness goes up.
10 You know, one thing we could do is essentially
11 stay with the 150,000 mile warranty for the verification
12 procedures, as we have indicated. But at the same time
13 take advantage of what Mr. Bertelsen just offered, which
14 was he did say that MECA members would probably be
15 offering additional extended warranties on the equipment.
16 And just like with the engines where the
17 consumers have the ability to purchase extended
18 warranties, we could also do a cost effectiveness on the
19 regulations that reflect when we do those regulations that
20 there is the option for additional warranty coverage if
21 it's so chosen to be purchased by the consumers.
22 And so, therefore, the verification procedures
23 would be at 150,000 mile warranties, and yet at the same
24 time when we, for example, did the fuel truck rule, we
25 could do the standard baseline cost effectiveness based on

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1 the 150,000 mile warranty, but at the same time recognize
2 that there is a potential for extended warranty purchase
3 and, therefore, we would do an extended warranty purchase
4 cost effectiveness as well.

- CARB committed on the record to bring back the warranty issue before the Board if they decide it's feasible to change it to another number. Executive Officer Kenny, pg. 112, lines 3-24:

> I think in this particular situation what we are talking about is a 150,000 mile warranty as being a great place to begin. You know, I would expect that as time goes on we will probably come back to the Board and we will probably be pushing that warranty up.
>
> I do think also that for purposes of cost effectiveness, so that the Board has the full range of information at the time that it is making a determination on any particular regulatory requirement for a category of engines, that it probably is reasonable that the Board should have additional information that is beyond the 150,000 mile warranty verification number that we have proposed today. And so that's why I was suggesting that what the Board might want to consider doing is at least having the verification procedures go into place at the 150,000 mile level, but at the same time ask us to at the time we are providing to the Board cost effectiveness numbers for any particular regulatory requirement, that we actually also look at higher warranty numbers, so that the Board then has before it the full range of information that it can take into account in terms of what it is requiring on a particular category of engines.

- CARB again committed to add a cost-effectiveness estimate into the waste rule that would take into account extended warranties of 300,000 miles and more. This was not included in the latest draft of the waste rule. Board Member D'Adamo, pg. 113, lines 19-22:

> BOARD MEMBER D'ADAMO: Just on that point. I'm wondering if you could again clarify your earlier comment, Mr. Kenny, about an extended warranty and how that would fit in with the cost effectiveness.

Response from Executive Officer Kenny, pg. 113, lines 23-25; Pg. 114, lines 1-6:

> EXECUTIVE OFFICER KENNY: Sure. What we would do is, for example, when we brought the waste hauler rule to the Board, we would actually calculate the base -- cost

1 effectiveness number on the basis of a 150,000 mile
2 warranty, we would provide a second or even potentially a
3 third cost effectiveness number, which would take into
4 account the purchase of extended warranties that would run
5 the warranty timeframe up to 300,000 miles or something
6 greater.

- CARB Board directed the Executive Officer to follow through on the warranty issues as prescribed above. This was not done by CARB staff prior to finalizing the Retrofit Verification Procedure or the waste rule. Board Members Roberts and Burke, pg. 114, lines 9-14:

9 BOARD MEMBER ROBERTS: Mr. Chairman, I'm actually
10 feeling comfortable today. I know that's a rarity
11 sometimes. But I'd like to move the approval of this
12 subject to the points that were raised by Mr. Beck and the
13 follow through of Mr. Kenny on the warranty issues.
14 BOARD MEMBER BURKE: I'd like to second that.

- The motion also included getting reports when four-percent failure rate occurred. Data on failures has still not been released, even after multiple data requests. The only data CARB provided was engine exhaust temperature data. It is street knowledge that a high percentage of vehicles failed with traps. You are now asked to vote on a regulation where failure data is key, withheld outside the control of the trucker. Both the courts and the legislature were asked to act. The relationship between the trucking industry and the Board was volatile. Most of our resources were concentrated on fighting CARB. Pg. 114, lines 15-25, Pg. 115, lines 1-2:

15 EXECUTIVE OFFICER KENNY: There was one other
16 matter that was raised by Mr. Calhoun with regard to the
17 February 1st date and the four-percent failures. And I
18 guess I was curious also about the sentiment of the Board
19 with regard to changing that so that, in fact, we would
20 get reports earlier if, in fact, that four-percent failure
21 was beginning to occur.
22 CHAIRPERSON LLOYD: I think that's appropriate.
23 BOARD MEMBER ROBERTS: Yeah, I'd like to see that
24 included also as part of the motion.
25 CHAIRPERSON LLOYD: We got a seconder?

BOARD MEMBER BURKE: Yeah, I'll second it.

- Finally, at the adjournment of the meeting, CARB board members seemed comfortable that CARB staff would work with the end-user to make sure all warranty issues were resolved before the first retrofit mandate was brought before the Board. The version of the Solid Waste Collection Vehicle rule going before the Board on 9/25/03 includes none of the Board directed actions that CARB staff was to take. Pg. 115, lines 4-17:

> BOARD MEMBER BURKE: I'd like to congratulate the staff. I know this was arduous today, I know contentious at times. But I think that your compromise that you worked out is really effective and we'll be able to analyze what it's really worth for that extended warranty.
>
> We all know that the extended warranty business is a very lucrative business. So we want to really hone that to the bone when we bring it back to the Board and make sure it's as lean as can be.
>
> CHAIRPERSON LLOYD: And also I think, just to let staff know, there is nothing that would please -- I presume my colleagues -- and certainly nothing would please me more that when we come back with the waste rule that we will have the support of Stephanie.

The Board-directed actions transcribed above were not carried out nor were Board members' concerns addressed by CARB staff.

Recommendation 3:

Require ECD manufacturers to include provisions in their warranties to cover the costs of any engine failures caused by their devices in case the engine warranty is nullified. CARB should also establish a dispute process to resolve claims by vehicle owners against ECD manufacturers for equipment damage resulting from the use of ECD technologies.

Require staff to report to the Board, on or before April 1, 2005, and each year thereafter on the effectiveness of the previous year's phase of the implementation of the control measure. The report shall include, all of the following:

- A survey of the type of BACT devices utilized in the previous calendar year to meet the first implementation deadline;
- An estimate of the emission reductions attributable to these new control measures; and
- A survey of rate-regulated haulers to determine the extent to which these haulers were compensated for the cost of complying with mandated control measures.

This report should include information from the California Integrated Waste Management Board regarding whether the financial effects of the rule have had any adverse impacts on the achievement of AB 939 diversion mandates.

4. **Diesel emission control devices are dependant on a consistent duty cycle and route to maintain exhaust temperatures, which limits where and how a company can use a truck once the device is installed.**

CARB still has not taken into consideration that trucks aren't always put on the same routes. Your initial exhaust temperature data suggests that the determination of a "best available control technology" (BACT) device's effectiveness is dependent on each vehicle and its duty cycle. Once a BACT device is installed on a vehicle, it is possible that changing its route would change the exhaust temperatures and thus eliminate the effectiveness of the BACT. Our members need the flexibility to efficiently manage their operations. To have a device that makes it impossible to move your trucks around will cause unnecessary equipment, labor and fuel costs. These costs are not reflected in cost estimates.

Recommendation 4:

Delay implementation until the technology is mature and works in every application. Add the additional equipment, labor and fuel costs to the analysis.

5. **Inadequate distribution plan for fuel, directly impacting supply statewide.**

The fuel price and supply issue is still unresolved. It has been since 1993. CARB cost estimates are monthly averages, which are then averaged over a 5 year period. Requiring the widespread use of ultra low sulfur diesel (ULSD) fuel before 2006 is not realistic, and there will be both supply and procurement concerns within the waste collection industry. It is clear that the distribution system cannot dedicate trucks and pipelines to this special fuel in order to protect users from sulfur poisoning. Additionally, requiring refuse haulers to "figure out" how to procure a reasonably priced fuel during this time frame will only exacerbate production and supply problems and hinder, if not interrupt, their ability to collect garbage in our state. This rule creates a statewide shortage in ULSD, which the prices will reflect.

Recommendation 5:

Implementation should be delayed until ULSD is required federally in 2006, eliminating the high probability that the oil companies will gouge the end user.

6. **End – user requirement to locate house a fuel supply for a single year**

Members of CTA's Petroleum Tank Truck Conference have explained to CARB staff (on multiple occasions) the difficulties involved with the transport and storage of 15-ppm diesel fuel before it becomes the national standard. Use of ULSD will require dedicated trucks and storage tanks, which the industry can't obtain in a timely fashion, and which will become unnecessary in 2006.

The implementation dates in your proposal complicate trucking operations by encouraging the solid waste collection companies to bifurcate their fuel. Although CARB staff has repeatedly

quoted an incremental cost of $0.06/gallon to procure ULSD before the 2006 fuel standard is implemented, CTA members that are currently testing ECD's are paying an average of $0.15-0.25/gallon more for ULSD, depending on their location. It may be CARB's intention that entire fleets will use ULSD, but this is not likely. Diesel prices are already outrageously high due to CARB's boutique fuel standard. The one year requirement to store ULSD in 2004 and 2005 for 1994-2002 engines makes them worthless and increases the purchase and retention of older vehicles. The same scenario has happened to California registrations--anyone who can register out of state has. CTA has received ongoing calls from companies seeking to transfer registrations to other states.

Recommendation 6:

Modify the cost criteria to reflect the cost of dual storage and the appropriate permits. Delay implementation until ULSD is required federally in 2006.

7. Departure from fuel neutrality, allowing three times more pollution.

Natural gas is unfairly favored without regard for criteria pollutants. Recent studies show its particulate is significantly more toxic than diesel with a particulate trap. In addition, PM and NOx levels will not meet federal 2007 standards in higher horsepower applications (above 280 HP) and engine manufacturers can't use the NOx adsorber technology planned for diesel due to the inability of methane to work as a reductant. The Federal Justice Department has taken a position on the South Coast Air Quality Management District waste rule, which guarantees it is all but overturned.

Recommendation 7:

CTA requests that CARB retreat from this path of favoring a technology.

8. Enormous fuel, hardware, and labor cost burden without environmental benefit and with certain slow down of fleet turnover.

Currently, the market price for a DPF averages between $20-25 per horsepower. Add the costs of taking a truck out of service for a day to install the device, the capital cost of the backpressure monitor, the labor costs to install the device, remove the muffler and install the backpressure monitor, the cost of training drivers and maintenance personnel, and the incremental cost of $0.15-$0.25 per gallon for the 15-ppm diesel fuel and transportation of that fuel, bringing costs to between $10,000.00 - $15,000.00 per vehicle. This is a not a cost that is easily absorbed or passed on by a solid waste company, especially since the regulation has no mechanism by which garbage collection contracts can be modified or renegotiated. Worse, CARB's last minute lobbying of municipalities and plans to exchange their staff exemption for support of the rule is unethical.

While other industries may be able to pass on costs by raising the price of their services, solid waste collection companies are bound by contracts that were negotiated and finalized long before CARB staff proposed these regulations. This means that smaller companies that are currently

making a scant profit will have to eliminate jobs, many of them Teamsters, in order to keep their businesses running. On page 49 of the Staff Report, CARB estimates the average annual cost of the regulation for a small trucking company to be $47,600. That amounts to the salary of one, possibly two employees for that company.

That CARB staff has worked with municipalities on underground changes to the regulation to absolve them of all responsibility for compliance without consulting all stakeholders places the entire process in jeopardy. In a draft version of the rule, "Draft 15-Day Changes to Regulation Order, 9-16-03," all language placing any responsibility on municipalities is stricken from the regulation. If municipalities are not given any responsibility for compliance with the regulation, there will be no way for solid waste collection companies to pass on the outrageous costs of retrofit.

Recommendation 8:

Delay implementation of this regulation until CARB staff has worked with the solid waste collection industry to perform a realistic cost effectiveness analysis. This should include additional costs for extended warranties on ECD's and realistic incremental costs for ULSD.

9. The proposed waste rule keeps older, dirtier vehicles on the road longer

Finally, this regulation makes the oldest of vehicles with the highest pollution levels the most valuable. This is a serious departure from clean air because the proposed control measure acts as an incentive for keeping older equipment, while foregoing both particulate matter and oxide of

Group	Engine Model Years	Percentage of Group to Use Best Available Control Technology	Compliance Deadline	Translation
1	1988 - 2002	10 25 50 100	December 31, 2004 December 31, 2005 December 31, 2006 December 31, 2007	**Move or sell these trucks**
2[a]	1960 - 1987	25 50 75 100	December 31, 2007 December 31, 2008 December 31, 2009 December 31, 2010	**Buy these trucks**
3	2003 - 2006	50 100	December 31, 2009 December 31, 2010	**Hold off Purchase of 2004, 2005 model years**

[a]Group 2: An owner of an active fleet of 15 or more collection vehicles may not use Level 1 technology as best available control technology

nitrogen emissions reductions that have been achieved by purchasing new equipment from national engine manufacturers. The following table illustrates how CARB's implementation schedule will affect the purchasing habits of the solid waste collection industry.

CARB's implementation schedule makes 1960-1987 MY engines the premium engines to own and encourages solid waste collection companies to delay purchases of new engines.

Recommendation 9

CTA proposes the following implementation schedule:

Group	Engine Model Years	Percentage of Group to Use Best Available Control Technology	Compliance Deadline
1	1988 - 2002	15	December 31, 2006
		35	December 31, 2007
		50	December 31, 2008
		100	December 31, 2009
2[a]	1960 - 1987	25	December 31, 2007
		50	December 31, 2008
		75	December 31, 2009
		100	December 31, 2010
3	2003 - 2006	100	December 31, 2010

[a]Group 2: An owner of an active fleet of 15 or more collection vehicles may not use Level 1 technology as best available control technology

We are not equipment manufacturers, nor retrofit device manufacturers or fuel producers. The California Trucking Association respectfully requests that you withdraw this costly and unfair mandate that targets the end user, who has absolutely no control over the interface of engines, aftertreatment devices and fuel. Put the responsibility on the municipalities, where the purse strings are retained, or find a reasonable funding source for this expensive rule that will obtain only minimal environmental improvement, if at all.

December 19, 2002

Crystal Reul-Chen
California Air Resources Board
9480 Telstar Avenue, Ste. 4
El Monte, CA 91731

RE: November 25, 2002 Version of CARB's Proposed Solid Waste Collection Vehicle Rule

Dear Ms. Reul-Chen:

The California Trucking Association (CTA) is again submitting comments regarding your proposed Solid Waste Collection Vehicle Rule. This is our 4th submittal of comments on this topic. We are opposed to this proposal in its entirety. It is still an unworkable, economically damaging control measure.

Our issues in summary are:

- The California Air Resources Board (CARB) is preempted from requiring modifications on new engines by the Clean Air Act.
- The proposal is subject to due process concerns.
- Nullification of industry standard warranties, which extend from 500,000 to 1,000,000 miles.
- Transfer of new engine modification liability to the end-user.
- There is not enough performance data regarding the in-use performance of diesel particulate filters (DPFs) on the various types of solid waste collection vehicles used in California.
- Diesel emission control devices are dependant on a consistent duty cycle and route to maintain exhaust temperatures, which limits where and how a company can use a truck once the device is installed.
- Inadequate distribution plan for fuel, directly impacting supply statewide.
- End – user requirement to locate a "boutique" fuel that is not mandated for sale in California.
- Departure from fuel neutrality, allowing three times more pollution.
- Enormous fuel, hardware, and labor cost burden resulting in little environmental benefit and certain slow down of fleet turnover.

First and foremost, we believe that the issue of Federal preemption has not been addressed. The authority to modify a new engine is pre-empted by federal law until such time as the first rebuild. The preemption provisions of the Clean Air Act (CAA) do not allow states to adopt or enforce emission standards on new motor vehicles or engines. Your agency has limited authority to adopt emission standards for new motor vehicles, but only if certain conditions are met. Those conditions include adequate "lead time and stability" for any "new" engine or vehicle standard.

In order to proceed with this rule, your agency would need to obtain a waiver of federal preemption from the EPA. CTA would oppose any such waiver.

Engine manufacturers and trained professionals make and repair our engines. Companies who make retrofit devices must be coordinated through engine manufacturers who need and have legal standing to require lead-time and stability to integrate technology in a safe and cost-effective manner. If national engine manufacturers are provided 4 years lead-time to build engines with lower emissions, trucking companies should not be saddled with only a year. This action is arbitrary and capricious.

National engine manufacturers are given three years of stability after an engine standard rule is implemented. Under your proposal, trucking companies would be given no stability and an expensive and constantly moving target. This proposal demonstrates that CARB has lost hope of working with national engine manufactures and would prefer to have trucking companies be responsible for the products that they purchase. This method of regulation is anti-consumer and irresponsible. California truckers are tired of being the guinea pigs for technological changes that are rushed to the table before they are scientifically ready for market. We are consumers, not manufacturers.

Your proposal is subject to due process concerns in regards to the warranty issue. During the verification procedure workshops, your staff was directed to remedy the warranty issues inherent in the verification procedure with this rule. This proposal fails to provide that solution and manages to base compliance on the verification procedure, which is not finalized and unfairly penalizes consumers. Industry cannot effectively comment on the proposed rule when the program that it is based on is a moving target.

CARB has created a fatal flaw with regard to warranties where the end user is no longer protected due to mandatory state modifications to engines. Your proposal is a reprieve from any liability for manufacturers and a delegation of all responsibility and liability to the consumer. This approach is harmful to the consumer, who needs to be protected from trap and engine manufacturers liability. The consumer is placed in the crossfire of "who is responsible," which will surely result in finger pointing by all manufacturers of these required modifications on engines, particulate traps, backpressure devices and all the other bells and whistles created by a flawed government mandate. Your proposed control measure is unprecedented in California liability laws and regulations.

CARB has released little to no data regarding the in-use performance of DPFs. The minimal information that you provided at the last workshop on exhaust temperature data-logging is not sufficient. It is virtually impossible to estimate total retrofit costs, including maintenance requirements, impacts on engine diagnostics, loss of fuel efficiency, and the impacts on vehicle performance without complete and detailed information from the use of DPFs on different types of refuse trucks and their typical duty cycles. Additionally, it does not look like CARB has

considered the fact that trucks aren't always put on the same routes. Your initial exhaust temperature data suggests that the determination of a "best available control technology" (BACT) device's effectiveness is dependent on each vehicle and its duty cycle. Once a BACT device is installed on a vehicle, it is possible that changing its route would change the exhaust temperatures and thus eliminate the effectiveness of the BACT. Our members need the flexibility to efficiently manage their operations. To have a device that makes it impossible to move your trucks around will cause unnecessary equipment, labor and fuel costs.

The fuel price and supply issue is still unresolved. Requiring the widespread use of low sulfur diesel fuel before 2006 is not realistic. The California Energy Commission must respond to supply concerns. It is clear that the distribution system cannot dedicate trucks and pipelines to this special fuel in order to protect users from sulfur poisoning. Additionally, requiring refuse haulers to "figure out" how to procure a reasonably priced fuel during this time frame will only exacerbate production and supply problems and hinder, if not interrupt, their ability to collect garbage in our state.

Members of CTA's Petroleum Tank Truck Conference have explained to CARB staff (on multiple occasions) the difficulties involved with the transport and storage of 15-ppm diesel fuel before it becomes the national standard. Dedicated trucks and storage tanks will be required, which the industry can't obtain in a timely fashion, and which will become unnecessary in 2006. The implementation dates in your proposal interfere with the excess demand for fuel delivery trucks forced by the MTBE switch to ethanol.

Additionally, we oppose your retrofit rule because this proposal is not fuel neutral. Natural gas is still favored, even though recent studies show its particulate is significantly more toxic than diesel with a particulate trap. In addition, PM and NOx levels will not meet federal 2007 standards in higher horsepower applications (above 280 HP) and engine manufacturers can't use the NOx adsorber technology planned for diesel due to the inability of methane to work as a reductant.

Lastly, we would like to remind you that the market price for a DPF is between $35-$50 per horsepower. Add in the cost of taking a truck out of service for a day to install the device, the capital cost of the back pressure monitor, the labor costs to install the device, remove the muffler and install the backpressure monitor, the cost of training drivers and maintenance personnel and the incremental cost of $0.15-$0.25 per gallon for the 15-ppm diesel fuel and transportation of that fuel, and you are now looking at the $10,000.00 - $15,000.00 range per vehicle. This is a not a cost that is easily absorbed or passed on by a solid waste company. And contrary to your beliefs, many of California's waste haulers do not have the bottomless pockets and large, negotiable municipal contracts that you seem to think that they can rely on to comply with this rule.

This rule is seriously flawed and makes the oldest of vehicles with the highest pollution levels the most valuable. This is a serious departure from clean air because the proposed control measure acts as an incentive for keeping older equipment, while foregoing both particulate matter and oxide of nitrogen emissions reductions that have been achieved by purchasing new equipment from national engine manufacturers. We are not equipment manufacturers, nor retrofit device manufacturers or fuel producers. The California Trucking Association respectfully requests that you withdraw this costly and unfair mandate that targets the end user, who has absolutely no control over the interface of engines, aftertreatment devices and fuel.

Sincerely,

Stephanie Williams
Vice President

SRW:amw

Cc: Mike Kenny, Executive Officer
Annette Hebert, Chief, Heavy Duty Diesel In-Use Strategies Branch
Nancy Steele, Manager, Retrofit Implementation Rule

Joint Comments of the California Trucking Association and California Refuse Removal Council, Northern District, on the California Air Resources Board's Proposed Refuse Removal Vehicle Rule for Diesel-Fueled Engines (Environmental Waste Rule)

The California Refuse Removal Council (CRRC) is a non-profit association of independent hauling and recycling companies founded in 1952. Its Northern District is comprised of more than 50 companies providing sanitation services throughout northern California. The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. CTA is the second largest trucking organization in the world providing comprehensive policy, regulatory and legislative support to our member companies. Our members range from the one-truck operator to large international companies who serve the public through safe and efficient goods movement. CTA and CRRC support the efforts of the California Air Resources Board (CARB) in reducing particulate emissions from heavy-duty, on-road diesel vehicles as long as it is technologically and economically feasible for California trucking companies. CTA and CRRC jointly oppose the Proposed Refuse Removal Vehicle Rule for Diesel-Fueled Engines (Environmental Waste Rule).

CARB has the opportunity to level the playing field for the California trucking industry by harmonizing fuel standards with the federal EPA. Today we are paying considerably more for diesel than our bordering states. The Environmental Waste Rule further exacerbates the diesel fuel price and supply problem in California for all vehicles involved in the transportation of liquid and solid waste products, a much more expansive population than neighborhood garbage trucks.

This will have a crippling effect on California-based trucking companies that move all forms of waste. The cross media impact this rule will have on the recycling industry is significant. CARB should carefully consider the impacts this rule will have on the state's recycling effort.

California companies will be forced to delay new truck purchases and instead use new vehicle purchase monies to retrofit older equipment scheduled to be retired in the near term. This ultimately slows down new truck purchases and forces them to use older equipment longer. The Environmental Waste Rule will have an overall negative impact on California's State Implementation Plan (SIP) for ozone because it will slow down truck turnover. We would request that EPA evaluate California's SIP for conformity based on the adoption of this rule.

While we carefully support reducing particulate emissions from the on-road sector, we ask that CARB look beyond models and technology forcing emission standards to economics and market behavior. Only then will the California trucking industry be able to purchase new vehicles with cleaner emissions. We carefully support retrofit of noncompetitive trucking operations where the additional costs of after-treatment devices and boutique fuels can be passed along to the shipper or user. Unless the Environmental Waste Rule is voluntary or subsidized and provides for a national fuel supply, we are opposed to any such mandate.

Our comments are preliminary as the Environmental Waste Rule is provided only in concept, not in regulatory or rulemaking form. Additional comments will be provided should a hearing on this issue take place.

1. The Environmental Waste Rule requires a subgroup of trucking companies to use a speculative fuel supply in 2003.

According to the draft rule proposed by CARB, the rule applies to refuse removal vehicles as defined in Title 42 U.S.C.A. Chapter 82 - Solid Waste Disposal Section 6903 (28), which states:

> The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

This broad definition applies to at least, and likely more than, 191,404 California registered vehicles identified by the California Highway Patrol as waste haulers. Keep in mind that the entire population of California registered heavy-duty trucks is less than 400,000 vehicles. The vast majority of these trucks, defined by CARB under the Environmental Waste Rule, would be competing with interstate trucks. These are trucks that do local garbage collection as well as those that haul solid, semisolid or liquid wastes, oil filters, appliances, storm water runoff, tires or manure, to name just a few products. The name selected by CARB for the Environmental Waste Rule, "Public Workshop Regarding New Emission Standards For In-Use Heavy-Duty Diesel-Fueled Refuse Removal Vehicles," is misleading, arbitrary and capricious. Notification of all segments of the trucking industry is required under California law.

Recommendation 1: Withdraw the proposed Environmental Waste Rule.

2. **The Environmental Waste Rule requires the use of a boutique fuel that is not required for sale in California. Two oil companies would control the price and supply of diesel fuel with no regulatory standards or supply guaranteed.**

Diesel fuel is the lifeblood of California goods movement. In late 1988, CARB adopted a California-only diesel fuel standard and set a compliance date of October 1, 1993. The regulations require that all motor vehicle diesel fuel sold within the state must not only meet the federal low-sulfur requirements, but must also meet the aromatic equivalency of no more than 10%. The cost of a California-only diesel fuel was estimated by CARB at no more than 6 cents per gallon more than federal diesel fuel. As you know, price spikes due to supply shortages and pricing by oil companies acting as if they are operating in a competitive market have plagued trucking companies who are forced to purchase this fuel.

Competition in the trucking industry is price focused. Shippers do not grant allowances for cleaner-burning fuels in their rate structure, but rather select trucking companies first by price and then service. California trucking companies are paying more than those out-of state competitors who do not fuel in California. Lack of a national fuel regulation is prohibiting California trucking companies from competing on a level playing field with out-of-state carriers.

California truckers have endured four major periods of price spikes where the disparity between California diesel prices and those of neighboring states has been upwards of 40-50 cents per gallon. The three major disruptions were 1) during the introduction of CARB Fuel (10/1/93), 2) during the introduction of California reformulated gasoline (4/1/96), 3) the explosions and fires

at Tosco (Avon) and Chevron (Richmond) refineries (3/99), and 4) the August 2000 fuel shortage.

The cost of fuel is so price sensitive and the ease with which national and interstate carriers can change their fueling patterns is so cost reactive that legislative action was necessary to level the playing field on just one small component of the price - the sales and use tax. On October 2, 1997, Governor Wilson signed AB 1269 at the request of California truck stop operators and local governments as an attempt to return fuel purchases and their associated taxes back from the bordering states. The state was required to act on this small component of our single state fuel. Imagine the cost of this fuel if we allowed just two oil companies to operate within the unregulated market provided for in the Environmental Waste Rule.

California carriers represent 9.1% of the 1,354,447 big rigs (over 33,000 lbs.) registered to operate on our nation's highways. The fuel specifications were adopted to reduce air pollution, yet there is no mechanism in place to stop the free market from transferring fuel purchases to a more reasonably priced, available fuel supplies outside the borders of California.

From the 1950's until the 1970's the California trucking industry prospered under state and federal regulation. However, starting in 1974, a series of events occurred that changed California trucking. Leading economists called for government to end the pricing regulation of the transportation industry. Federal and state deregulation was implemented by 1990 and teamsters-organized companies, once the dominant truckers in California, were in the minority and shrinking. California prices, once set on Teamster wage rates, fell to the labor cost of the lowest cost competitor. Interstate trucking companies, long held out of California by the comprehensive system of state and federal economic regulation, moved into the heavily trafficked markets to further increase the competition and reduce prices. At this same time, California's economy plunged into a deep recession. By 1992, California's robust economy was in tatters and a cycle of consistent and ever-present competition on prices and service fell upon trucking.

In 1993, CARB diesel was introduced in California. While the incremental costs were estimated at 4 cents, the price at the pump did not reflect the costs. The economic consequences for the subgroup of trucking companies captured by this rule are real and significant. Oil companies would go from a regulated oligopoly, as defined by the California Attorney General, to a monopoly with no standards whatsoever. This is not in the interest of the public, who would pay the increases in cost if there were a level playing field for truckers, or to the regulated community who would be required to absorb these costs or go out of business.

The additional cost of 15ppm sulfur diesel is accurately estimated at $0.25-0.75 per gallon, which is documented by the California Department of Transportation in their competitive bid process reflecting the economies of scale of their large purchases. In 2003, the boutique fuel necessary to enable the emissions standards required by this rule cannot be transported through the pipeline. Therefore, the delivery system would consist of dedicated tanker loads (laden with a 9,100 gallon standard payload) being dispatched from two refineries in the state producing the boutique fuel. Since the proposed rule includes all areas of the state, this system would place thousands of additional tanker loads per day on our highways with the daunting task of delivery product in a timely manner to remote regions. This is a risky proposal that will give oil companies windfall profits and hurt the public. In addition, the prices reflected through allowing

the oil companies to game the market will be seen by the nation as the cost of 15 ppm sulfur diesel fuel and risk the adoption of a national clean diesel fuel standard. Imposing a 15ppm fuel standard on environmental waste haulers three years before the national fuel standard is not well thought out and should be reviewed by both the California Energy Commission and the California Attorney General.

Recommendation 2: Harmonize fuel standards with the national fuel standard in 2006.

3. Retrofit for California based fleets would be fatal to their businesses. Incremental costs are significant and cannot be recovered by California companies.

CARB is unable to control interstate traffic and the corresponding emissions inventory from out-of-state diesel engines and should not add additional costs to California-based competitive operations. Retrofit of heavy-duty engines is estimated to cost up to $9,500 per engine. This does not include the cost of taking a truck out of service, the incremental costs of using 15ppm sulfur diesel fuel, and the fuel economy penalty from using a particulate trap. Many of the trucks on the road today aren't even valued at $9,500. This type of cost burden would be catastrophic for most California environmental waste transporters.

The draft Environmental Waste Rule proposed by CARB provides an exemption for small fleet operators. This exemption is an admission that the rule is not economically feasible. Furthermore, contractual obligations for storage and pickup of liquid, solid and semi-solid waste place companies in legal peril should their vehicles fail to meet the health and safety requirements of their contracts. For example, Title 14 of the California Code of Regulations Section 17410.1 requires, "facilities shall remove solid waste within 48 hours from the time of receipt." An unreliable fuel delivery system and unknown equipment performance using the mandated "traps" have the potential to create an unacceptable risk to public health and safety.

CTA recently adopted an alternative strategy for reducing particulate matter from environmental waste haulers as well as other vehicles. Our proposal would retrofit all vehicles in the state by 2007 through incentives such as grants and tax credits, and would promote greater compliance with the regulation before the national fuel standard phase-in of January 2007. CTA's proposal takes the following approach:

A. Federal Tax Credit for Retrofit: California trucking owners who voluntarily retrofit their vehicles will be given federal tax credits to offset the cost of the retrofit.
B. Early Retirement Grants and Tax Credits: Refuse removal companies that voluntarily retire vehicles in favor of purchasing new vehicles will be given grants or tax credits.
C. Prohibited Registration of Pre-1992: Refuse removal companies will not be able to register pre-1992 vehicles after January 1, 2007.

The benefits of this program are immediate as companies rush to retrofit to get the tax credits before the sunset date of January 2007. After 2007, retrofit would be required and no tax credits or grants would be offered. This program would insure that retrofit technology would be available, provided by reputable companies with certified equipment prior to regulatory action. The economic consequences of retrofit, specifically the boutique fuel issue, would be resolved as

it would coincide with the national 15ppm sulfur diesel standard. The price and supply of fuel will no longer be an issue to slowing down new truck turnover as diesel fuel prices will be more level throughout the nation.

Recommendation 3: CARB should adopt CTA's proposal, which would promote compliance from environmental waste haulers using incentives rather than unreasonable regulations.

4. **Retrofit requirements for environmental waste haulers will nullify warranties on heavy-duty diesel engines, resulting in increased costs for affected companies.**

The liability for damage to vehicles under warranty and vehicles not under warranty that suffer catastrophic failure due to the back pressure increases related to certain retrofit devices is unclear. This issue must be thoroughly evaluated with test data on each diesel engine cycle, especially those cycles which use power take-off for functions other than moving the vehicle (neighborhood garbage trucks, cement trucks for example).

Warranty on the certification of emissions standards and who would be responsible for a trap that fails have not been discussed.

Recommendation 4: Provide a detailed analysis on responsibility, warranty issues and legal issues surrounding certification and recall.

5. **The reporting requirements outlined in the rule are unreasonable, unnecessary, and do not improve air quality.**

California trucking operations are currently subjected to a variety of air, water, and hazardous waste inspection and reporting requirements, including BIT audits, DOT audits, Certified Unified Program Agency inspections, and State Water Resources Control Board permitting and inspections. The proposed rule imposes unnecessary and unwieldy reporting requirements that will only serve to make it more difficult for owners to operate their businesses within California.

Any bureaucracy attempted for California's truck population is opposed by CTA. Reporting requirements lead to fees, inventories or audits that are duplicative when existing truck regulation in the state of California is considered. Should retrofit be required under California law for any segment of the trucking industry, enforcement should be handled by agencies already inspecting trucks such as the California Highway Patrol. We are opposed to increased and duplicative regulation by government agencies with respect to California located terminals and the trucks that are housed here.

Recommendation 5: CARB should eliminate all reporting and paperwork requirements from this rule.

6. **The exhaust emission standards proposed are unproven and technologically infeasible using current certified technology and evaluating current test vehicles.**

The rule proposes two methods of meeting its exhaust emissions standards:

a) Using an ECS verified under the Retrofit Verification Procedure; or
b) Achieving an 85% reduction of diesel PM emissions from the engine certification level, or 0.01 gr/bhp-hr diesel particulate matter emission level through an ARB certified replacement, repower, manufacture, or fuel and/or engine change.

Currently, the technology described in the rule is neither certified by CARB, tested for durability nor documented as emissions control technology fit for all diesel engines in the state. Trucking companies are being required to "figure out" how to reduce emissions from Pre-94 engines which engine experts and after-treatment experts cannot understand. CARB is required to demonstrate that the technology is feasible and won't hurt our engines. Only then can this regulation be considered with thorough test data regarding retrofit on a random sample of all diesel engine technology. The test data collected by CARB demonstrates that retrofit does not work on older vehicles. Therefore, CARB is asking the trucking industry to become retrofit manufacturers and experts instead of freight forwarders.

CARB is aware of problems with almost 50% of the in-use engine population and continues to arbitrarily mandate unproven, technologically infeasible standards on truck owners. This is equivalent to mandating the passenger car owner to achieve 85% reduction in hydrocarbon emissions with devices that are speculative, unproven and could cause catastrophic damage to in-use engines. CTA and CRRC members are the public. When it comes to our vehicles, we expect CARB to do their homework before proposing or adopting regulations.

CARB diesel was untested before the October 1993 introduction and trucking companies had to be reimbursed by the state for damage to trucks caused by CARB fuel. CARB should stop forcing technology on end users and work with the original engine manufacturer to see if retrofit is technologically feasible for all engines. The adoption of this rule has the potential to leave the trucking industry bearing the cost of CARB's technology-forcing regulations that were unproven, untested and infeasible.

Recommendation 6: CARB should propose no further regulations which mandate technology that is not available, not certified, and insufficiently tested on all engine models.

7. CTA and CRRC are opposed to the compliance provision of the Environmental Waste Rule.

Standards for vehicles that require no visible emissions do not allow for in-use failure. Performance standards for the operation of this subgroup of vehicles are cost prohibitive and extremely burdensome. This rule creates an unnecessary government bureaucracy for 1-2% of the trucks on California roads. The compliance provision of the rule is overreaching, arbitrary and needs to be reconsidered to avoid the same issues that came out of the Smoke Inspection Program--issues which ultimately suspended the program until the details could be worked out by the Society of Automotive Engineers.

Recommendation 7: Eliminate the compliance provision of the Environmental Waste Rule.

8. **The exemption provisions for technical infeasibility are problematic and demonstrate the program doesn't work. The problem is transferred to the truck owner to solve.**

Retrofit of heavy-duty engines is either feasible for all engines or not feasible at all. Companies can't be required to spend money and time trying to figure out how to retrofit each truck. This part of the rule is very problematic because it demonstrates that CARB has no confidence in its own ability to certify retrofit equipment in a timely manner. It sets the standard for freight forwarders, not engine manufacturers, to meet or figure out for themselves.

Recommendation 8: CARB should not mandate emissions standards for existing vehicles and expect truck owners to meet them.

9. **The Environmental Waste Rule will slow down and discourage new engine purchases, impacting the state's ability to comply with the Ozone SIP and estimated NOx reductions.**

This rule changes the truck capitalization schedules and redistributes money from new truck purchases into maintenance budgets. This is a serious issue CARB must consider. CARB is proposing to change truck purchase investments for a large segment of California-based carriers. Reducing diesel particulate matter at the expense of NOx is problematic for our SIP.

Recommendation 9: CARB should adopt CTA's Board approved program of incentives.

September 7, 2001

Mr. Michael P. Kenny
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Dear Mr. Kenny:

Thank you for your August 20, 2001 letter regarding revisions to the Solid Waste Collection Vehicle Rule Proposed Regulation Order (Proposed Order). While California Air Resources Board (CARB) staff has significantly revised this proposed regulation, the California Trucking Association (CTA) is concerned with the Proposed Order in its entirety, the most problematic areas being the emissions standards and fuel specifications for in-use engines.

The Proposed Order demonstrates CARB's lack of knowledge concerning fleet maintenance; driver responsibility, truck safety, engine procurement, capital investment, fuel distribution and pricing related to a third diesel fuel requirement for select users of on-road diesel vehicles (EPA Diesel, CARB Diesel and the Proposed Order Fuel). While giving the Executive Officer eminent control over the fuel and engine configurations of the in-use fleet, the Proposed Order does little to address the real world problems with modifying an in-use engine where technology doesn't exist. Your agency is very aware that test fleets of heavy-duty trucks have found retrofit problematic.

The Proposed Order brings new truck purchase to a stand still while the uncertainty in the market is addressed. Projected reductions in NOx assumed in the EMFAC model will be nullified by this standstill. CARB plans to require a modified 2006 federal fuel standard a full three years early for many private fleets in the state.

Your letter states, "By expanding this requirement [use of 15-ppm sulfur diesel] to refuse collection service fleets, we expect supply and costs to be more stable." Simple economics defy this assertion and a comprehensive study by the California Energy Commission, the agency responsible for forecasting diesel fuel supply, is needed immediately. The 2004 introduction of reformulated gasoline will result in supply shortfalls and price spikes, as every introduction of a "California-only" fuel standard has. The timing of the introduction of reformulated gasoline, in addition to the Proposed Order's fuel requirements will wreak havoc with fuel supply and prices.

History demonstrates that prices will spike immediately and stay inflated for months following any new fuel reformulations. Under the Proposed Order, 15-ppm sulfur fuel is only available at one terminal in Southern California (BP) and one terminal in Northern

California (Tosco). The oil companies do not transport this product; jobbers do, and the distribution system is not prepared to dedicate trucks to this special fuel in order to protect users from sulfur poisoning. Requiring refuse haulers to "figure out" how to procure a reasonably priced fuel during this timeframe will only exacerbate production and supply problems and hinder, or more likely interrupt, their ability to collect garbage in our state.

While we agree that 15-ppm sulfur fuel is necessary to implement particulate matter retrofits, by delaying this rule until 2006 when this fuel will be available nationwide, you will take away the inherent risk associated with forcing a non-regulated commodity onto a subgroup of truckers.

We believe that the Proposed Order is unworkable due to the elimination of any meaningful public input. The creation of the International Diesel Retrofit Advisory Committee was supposed to provide a forum for this critical public input, yet your staff is speeding through the staff-envisioned retrofit of garbage collection fleets in a vacuum. The lack of public participation will ultimately result in a failed program, interruption in garbage collection, and significant negative economic impacts on the regulated community and ultimately on large populations of our state who expect timely garbage collection. We ask that you rethink this risky proposal and take time to have meaningful meetings with the regulated industry.

It is becoming very clear that the International Diesel Retrofit Advisory Committee will not be advising CARB on retrofit. CARB staff is writing rules before their own advisory group issues its recommendations, which begs the question...Why should industry groups waste their time attending meetings of an advisory committee from which CARB has no intention of seeking counsel?

As for the Proposed Order, preliminary comments are summarized below:

- The Proposed Order contains an extremely controversial fuel standard, which represents to CTA's Board of Directors a breach of confidence on behalf of CARB. CARB requires that retrofit devices be certified with a fuel different than the 15-ppm sulfur fuel adopted by the federal EPA; a fuel shown to increase NOx in engines using electronic gas recirculation (EGR) because of CARB diesel's cetane additive.
- CTA's Petroleum Tank Truck Carriers Conference (jobbers) cannot provide the distribution infrastructure necessary to deliver small quantities of fuel to each region of the state for a reasonable price, if at all. If the proposed order were delayed and implemented along with the national fuel standard in 2006, the necessary fuel could be delivered through the pipeline. Earlier implementation by the Proposed Order would require dedication of tank trucks to distribute the fuel outside of the pipeline system, which will cause significant supply shortages.
- In-Use Performance Standards developed by CARB require an in-use vehicle to be modified to meet federal 2007 new engine standards (.01 gr/bhph). The retrofit of pre-1994 engines has been demonstrated to be technologically unfeasible.

- The Proposed Order requires existing and new diesel engines to meet 2007 federal PM standards for new engines, but contains no requirements for alternative-fuel engines. In 2007, these "favored" alternative-fuel engines will be prohibited for sale nationwide, preempting CARB. These engines should be treated in a fuel-neutral manner, as if their particulate emissions are just as harmful as diesel.
- The Proposed Order strips companies of the decision making behind capital investments and fuel purchases and transfers these decisions to the Executive Officer. CARB is aware of the technological infeasibility of retrofitting pre-1994 engines to meet the 2007 new engine standards, yet offers owners the possibility of a one-time, one-year exemption at the pleasure of the Executive Officer. This provision is arbitrary, intrusive and an abuse of government authority. CARB should set reasonable standards and stay out of engine and fuel purchase decisions for private companies.
- The implementation schedule of the Proposed Order is costly, and provides little emission reduction at a very high price to the regulated community. Of the three tiers proposed, only the newer engines in Tier 1 would need to use 15ppm-sulfur fuel. However, the regulation arbitrarily requires every vehicle to use it with no environmental benefit and at a very high cost.
- The Proposed Order places private refuse collection companies at risk of incurring millions of dollars in costs that can't be passed on due to existing contracts with their customers.
- Under the Proposed Order, maintenance personnel and drivers would be required to install and monitor after market equipment provided by companies that are not working with original engine manufacturers to ensure that their technologies work properly together.
- Retrofit requirements nullify warranties on heavy-duty diesel engines.
- Under the Proposed Order, a driver of a garbage truck would be required to monitor the backpressure of an engine and diagnose sustained high backpressure. This new job duty would take the driver's attention off of the road, creating a negative impact on highway safety for every California motorist. In addition, CARB staff has stated (at the 9/5/01 Retrofit Verification Procedure workshop) that the warning time of backpressure monitors varies, and that technicians at truck maintenance shops have little or no knowledge of how to work on retrofit devices. Thus, refuse collection companies will have no guarantee that their drivers will be able to have their retrofit devices cleaned before a costly engine stall occurs.
- Retrofit for small and medium sized fleets would cause economic harm to refuse collection businesses.
- The Proposed Order requires a subgroup of the trucking industry to use a speculative fuel supply, with no regulations forcing oil companies to manufacture or provide the fuel for sale. The Proposed Order deviates further from a national fuel standard and creates a third diesel fuel use requirement. This fuel is incompatible with the pipelines and must be trucked, creating a very high likelihood of unavailability in the many remote corners of our state.

- The Proposed Order requires the use of an additional boutique fuel, with only two oil companies in the market controlling the price and supply, should they voluntarily decide to produce the special fuel.
- The exhaust emission standards proposed by the rule are unproven and technologically unfeasible, delegating installation, engineering, and manufacturing of fuel and particulate traps to truck maintenance personnel that don't have the necessary backgrounds.
- The exemption provisions for technical unfeasibility are problematic and demonstrate that the program doesn't work, especially since a vehicle is deemed worthless if the proper retrofit technology is not available after a one-year exemption.
- The Proposed Order will slow down and discourage new engine purchases, affecting the state's ability to comply with the Ozone SIP.

CARB proposes that private sector refuse collection service fleets should be required to procure a fuel that oil companies are not required to produce or sell. California's public has learned the hard way through the energy debacle that regulating the price of a commodity is problematic when you have no control over the supply. CARB now proposes to make uncertain the fuel and operational costs for refuse collection fleets, while still expecting these companies to operate under fixed garbage rates.

We are not equipment manufacturers, we are not retrofit device manufacturers, and we are not fuel producers; we move freight, in this case refuse. The California Trucking Association looks forward to more productive and inclusive meetings in the future.

Sincerely,

Stephanie Williams
Vice President

SRW:amw

cc: Vincent Harris, Governor's Office
Bill Lockyer, Attorney General
Winston H. Hickox, California Environmental Protection Agency
Alan C. Lloyd, California Air Resources Board
William Keese, California Energy Commission
Patricia Garbarino, California Refuse Removal Council

July 20, 2001

Michael P. Kenny, Executive Officer
California Air Resources Board
1001 I St.
Sacramento, CA 95812

Re: Comments on the California Air Resources Board's Proposed Refuse Removal Rule for Diesel-Fueled Engines

Dear Mr. Kenny:

The California Refuse Removal Council (CRRC) is a non-profit association of independent hauling and recycling companies founded in 1952. Its Northern District is comprised of more than 50 companies providing sanitation services throughout northern California.

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 companies and suppliers operating trucks into and out of California. CTA supports the efforts of the California Air Resources Board (CARB) in reducing particulate emissions from heavy-duty, on-road diesel vehicles as long as those vehicles do not compete with out-of-state trucks and incremental costs can be passed onto the consumer.

Jointly, the CTA and CRRC write you regarding our opposition to CARB's Proposed Refuse Removal Rule for Diesel-Fueled Engines (Environmental Waste Rule). Today we are paying considerably more for diesel than our bordering states. The Proposed Environmental Waste Rule further exacerbates the diesel fuel price and supply issues plaguing California. All companies involved in the transportation of liquid and solid wastes, a much more expansive population than neighborhood garbage trucks, are required to figure out how to reduce the emissions from existing vehicles.

In summary, our comments are:

- California truckers have been placed at a serious competitive disadvantage because of CARB's single state fuel. The Environmental Waste Rule requires a subgroup of the trucking industry to use a speculative fuel supply in 2003.

- The Environmental Waste Rule requires the use of a boutique fuel that is not required for sale in California. Two oil companies would control the price and supply of diesel fuel with no regulatory standards or supply guaranteed.

- Retrofit for California-based fleets would be fatal to their businesses.
- Retrofit requirements for Environmental Waste Haulers will nullify warranties on heavy-duty diesel engines.
- The reporting requirements outlined in the rule are unreasonable, unnecessary, and do not improve air quality.
- The exhaust emission standards proposed by the rule are unproven and technologically infeasible.
- The compliance provision is overreaching and arbitrary, and needs to be reconsidered.
- The exemption provisions for technical infeasibility are problematic and demonstrate the program doesn't work.
- The Environmental Waste Rule will slow down and discourage new engine purchases, impacting the state's ability to comply with the Ozone SIP.

We look forward to working together to reduce the particulate emissions from on-road heavy-duty vehicles. We support efforts towards cleaner air that are reasonable and fair. That said, the air will not get cleaner if California freight forwarders can't operate or do business in their own state and federal trucks from the borders capture the market outside the control of your agency.

Sincerely,

Stephanie Williams
Vice President, Legislative & Regulatory Affairs
California Trucking Association

Sincerely,

Patricia Garbarino
President
California Refuse Removal Council

SRW:sle

cc: Winston Hickox, Secretary of Environmental Protection, CalEPA
Alan Lloyd, Chairman, California Air Resources Board
William Keese, Chairman, California Energy Commission
Bill Lockyer, Attorney General, State of California
Vincent Harris, Office of the Governor

Appendix D

"Rush to Hearing"
California-Only Truck Standard
Proposed ATCM for Transport Refrigeration Units
Amendments to the Diesel Emission Control Strategy Verification Procedure
Heavy-Duty Diesel Engine Software Upgrade Regulation (Chip Reflash)

December 8, 2003

Terry Tamminen, Secretary
California Environmental Protection Agency
State Capitol Building
Sacramento, CA 95814

Dear Mr. Tamminen:

The California Trucking Association has serious concerns with the California Air Resources Board (CARB) direction to change the warranty and ownership standards for California heavy-duty diesel trucks. On December 11, 2003, CARB is poised to take action on the final touches of a retrofit package that will transfer emission control liability from equipment manufacturers onto truckers. This is unprecedented in any country and CTA seeks cancellation of the hearing to include all three items that directly impact heavy-duty trucks.

In-use testing conducted by CARB clearly demonstrates that the mandated emission control devices (also known as particulate traps) available for sale do not work on all in-use engines and have a high failure rate. Most troubling, a single device will not work on an identical engine because failure is route-specific and dependent upon the operating conditions of the vehicle. The driver would be responsible for monitoring engine parameters, which would be detrimental to highway safety.

California truckers would become the field-test subjects for the technologies of tomorrow. An extremely unfair burden would be placed on the purchaser by eliminating the need for manufacturers to debug new technology before it is sold to the end-user. This inappropriate transfer of field-testing belongs with the national engine and particulate trap manufacturers. Warranties are necessary to protect the consumer when equipment does not perform as promised.

On September 25, 2003, CARB approved a waste collection vehicle mandate that requires modification of in-use engines to operate in California. On December 11, 2003, CARB is moving forward with plans to require retrofit of the engine in refrigerated trailers. These mandates change the ownership and warranty obligations drastically and would make truck owners responsible for equipment that they do not manufacture. The regulations have been rushed during a change in administration, are extremely expensive and ignore both state and federal law.

The Engine Manufacturers Association has filed extensive legal comments that we have included for your review. CARB has no authority to change the ownership standards and warranty provisions of truck ownership. State and federal laws, including the Commerce Clause of the U.S. Constitution, clearly prohibit federal EPA and CARB authority for modifications to in-use vehicles. This is why federal EPA has moved ahead with a voluntary retrofit program modeled after the European Union's program.

CARB has disregarded our numerous requests that they cite the authority on which their regulations are based. On December 5, 2003, we received a letter that explained the need to transfer liability to the end user and their legal authority:

> ARB Chief Counsel Kathleen Walsh stated, "...there's no question that we have the authority to address PM emissions—toxic PM emissions from used motor vehicles in a fashion that staff has proposed". Ms Walsh goes on to say that EMA has sited [sic] in written comments a California statute that requires legislative authority in the use of certified devices on in-use vehicles. However she adds, "that statute was adopted by the Legislature pre-1975 in a very specific factual context that does not apply here". Ms Walsh then adds: "We now are in a world where since that statute was adopted, we have not only the Toxic Air Contaminant Act, which is a 1983 vintage statute with clear direction to this Board to attack the emissions of toxic air contaminants from motor vehicles, new and used and also provisions in state law which directs this Board to attack the emissions from used heavy-duty diesel vehicles with specific direction to adopt maximum controls for those vehicles, this would be used vehicles. That statute is a much later adopted statute and to the extent Section 43600 would require specific legislative authority, I think you have it there in Section 43701 to do exactly what staff has proposed here."

The statute CARB is using to justify their program is legislation that was sponsored by the California Trucking Association with regard to smoke inspection. This is the parallel smog check program for trucks which sets the limit of engine modification required to pass a state mandated smoke test. Clearly, this is not delegated authority for CARB to change the national ownership standards for truck engines. Furthermore, that a truck is subject to smoke testing does not give CARB rights to set new ownership standards for that vehicle every time a new gadget is developed. This system creates a new per-truck cost that exceeds the market value of many of the trucks on California's highways.

It is troubling that a state agency would circumvent existing law to cast their lot in the courts in hopes of gaining more authority through judicial interpretation. This method of enlarging authority through a judge, who would be reinterpreting existing law, leaves California's trucking industry without due process. There is no method for us to provide meaningful input from a hopeful litigation effort proposed by CARB.

In 1997, environmental groups sued CARB (Case No. 97-6916 JSL) for oxides of nitrogen measures in the 1994 Ozone State Implementation Plan (SIP) that were not implemented. On December 10, 1999, a friendly settlement was reached between the environmental special interest groups and CARB. Unbeknownst to CTA, retrofit provisions for specific heavy-duty trucks operators (garbage trucks, petroleum tank trucks and refrigerated trailers) were included in this settlement designed to reduce ozone pollution through oxide of nitrogen reduction.

CARB is using this lawsuit to justify moving ahead with particulate matter reductions, a completely different pollutant. Going around the legislative and executive branches of our government undermines democracy.

Retrofit, as proposed by CARB, changes the ownership standards of a truck. The liability of emission control, under this new ownership standard, shifts from Fortune 500 engine makers and retrofit device manufacturers to truck owners who are small businesses. This is unprecedented in any country. The European Union countries, years ahead in retrofit experience, do not mandate retrofit as CARB is proposing. For warranties, they require a minimum 2 year unlimited mile warranty to protect their investment in their voluntary government subsidized programs.

Our members were hoping the bleak business environment of the last administration had ended. California truckers who represent 1 in 12 jobs statewide would not be able to weather the

economic consequences of a moving engine target. We write to you in hopes that CARB will be directed to comply with Executive Order S-2-03 and cancel the hearing scheduled for December 11, 2003. Please feel free to contact me at (916) 373-3548 for more information.

Sincerely,

Stephanie Williams
Vice President

SRW:slh

CC: Senate and Assembly Transportation Committees
Senator Dick Ackerman
Assemblymember Kevin McCarthy
Peter Siggins, Legal Secretary, Office of the Governor
Sunne Wright McPeak, Secretary, Business, Transportation & Housing
Pat Clarey, Chief of Staff to the Governor
Donna Arduin, Director, Department of Finance

November 25, 2003

Honorable Arnold Schwarzenegger, Governor
State of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. Our members range from the one-truck operator to large international companies who serve the public through safe and efficient goods movement.

Pursuant to your Executive Order S-2-03, it is regretful that we find the California Air Resources Board (CARB) poised to move forward with three of the most costly and onerous regulations since 1993. CARB reformulated diesel fuel ten years ago for trucks who base-plate in California. Since that time, our industry has been forced to move out-of-state or operate at a 25-40 cent per gallon competitive disadvantage with interstate trucks. The environmental community negotiated the regulations scheduled for hearing on December 11, 2003 (attached) outside of the public review process as part of a "friendly" lawsuit against CARB. These regulations, if passed, will further debilitate the California trucking industry and deplete the State Highway Account of much-needed funds. The controversial regulations do the following:

1) Violate the terms of a legal "consent decree" made with national engine manufacturers to move into the courts and attempt to gain authority over interstate trucks.
2) Strip California truck owners of all engine and retrofit warranty protection without due process.
3) Ban the use of current transportation refrigerated trailers in California, including interstate trucks over which CARB has no regulatory authority.

As you can see, these are controversial issues that deserve the same review for impact on the business community pursuant to the above-mentioned Executive Order.

We have included a recent news segment from a local ABC affiliate station for your review to help you understand the economic crisis facing California's trucking industry. This independent investigative report demonstrates that hundreds of thousands of trucks have taken their state and federal highway dollars to bordering states, yet continue to serve California shippers while competing against the California-based, family-owned trucking industry.

We need your help and so does the State Highway Account. We ask that you direct CARB to include these controversial measures in the review process detailed in your executive order.

Very Truly Yours

Joel D. Anderson
Executive Vice President

cc: Sunne Wright McPeak, Secretary, Business, Transportation & Housing
Terry Tamminen, Secretary, California Environmental Protection Agency
Pat Cleary, Chief of Staff to the Governor

November 14, 2003

The Honorable Arnold Schwarzenegger
Governor-Elect, State of California
State Capitol
Sacramento, CA 95814

Dear Governor-Elect Schwarzenegger:

On behalf of the members of the undersigned associations representing those who operate diesel engines in California, we write to urge the immediate suspension of last minute regulatory actions by the California Air Resources Board (CARB).

Attached is the December 11, 2003 scheduled CARB agenda. This is a last minute rush to adopt all of the former administration's business-killing regulations that were held back due to the authority issues. Many of these regulatory proposals, with sufficient research and public input, could be moderated. The current versions lack consumer protection, encourage owners to register vehicles in other states and will significantly impact California's State Highway Account.

If adopted, California will forgo clean air for more truck traffic as more trucks move across our borders that do not even meet current California air standards.

Specifically, the items are being put forth without legal standing or state authority:

- Mandates for engine after treatment devices without warranties that provide any consumer protection
- Mandatory engine replacement of refrigerated trailers for California-only trucks (TRU)
- Mandatory engine replacement or retrofit of petroleum tank trucks
- CARB plans to renegotiate "consent decrees" (Oxides of Nitrogen rebuilds of existing engines found to violate the spirit of federal testing requirements) shifting the burden from engine manufacturers, who are parties to the agreement, to California truckers.

As it relates to TRU's, Grocery store operators, manufacturers of food products and restaurants move virtually all of their products via refrigerated trailers. Each trailer has an independent diesel engine providing power to the refrigeration unit, which emits a relatively small amount of diesel exhaust. Since these engines operate on a thermostat–controlled basis, the engine only operates when there is a need to cool down the trailer. The proposed regulations prohibit all 2001 and later model engines from operating in California if the rigorous engine standards are not met.

With respect to petroleum carriers, these operators deliver fuel to Arizona, Nevada and Oregon, the bordering states without their own refining capacity. The Interstate Commerce Clause of the United States Constitution prohibits CARB placing requirements on interstate trucks that pose a

burden to operating in or out of California. Modifying engines, stripping end users from their purchased warranties and collateral liability and requiring a fuel standard that is not available for sale is a serious burden on interstate commerce.

CARB has promised to bring forward their legal analysis of authority before such action could take place. We have been waiting for more than a year. Rather than comply with our simple request for their authority, they continue with plans to deprive California truckers from hauling freight in their home state.

CARB has no authority over the majority of the 1.4 million interstate trucks that travel from other places on California highways. The majority of trucks that operate on California roads operate under the federal Environmental Protection Agency regulations. Their fuel is less expensive and their engines do not require retrofit devices and specialty fuels.

While these regulations are simply "not ready for primetime" and will leave carriers with damage liability, CARB's urgency to rush these expensive, punitive regulations rests upon a behind the scenes court settlement agreement which we collectively were not a party to.

CARB entered into a friendly lawsuit with the Natural Resources Defense Council (NRDC), The Communities for a Better Environment (CBE) and the Coalition for Clean Air (CCA) in 1999 and agreed to regulations that have not been demonstrated as technologically feasible and have the immediate threat of engine damage. CARB is rushing because they entered into a legally binding document that establishes adoption deadlines and implementation schedules without gathering valuable and necessary input from the regulated community. Worse, most of the companies will have no choice but to re-route their vehicles or transfer their freight practices to national carriers who engage in interstate commerce to avoid such costly or technologically incompatible device and engine interface.

Finally, California's State Highway Account depends on vehicle's registration and fuel used in our state for funding. Truck registrations and fueling pattern trends demonstrate an exodus of trucks from California. The proposed CARB regulations are business crushing. It will cause further exodus of trucks and their associated taxes while being completely punitive to the 1 in 12 jobs that owe their living to trucking.

For the reasons stated above, the undersigned respectfully requests a suspension of all actions relating to the California Air Resources Board's proposed regulations dealing with retrofit and warranties of diesel engines. Until CARB has demonstrated both the authority to regulate interstate trucks and retrofit brand new trucks under federal laws, the rules should be suspended so that freight is not transferred to the majority of carriers who base their trucks out of state.

Sincerely,

Joel D. Anderson
Executive Vice President & CEO
California Trucking Association

Peter Larkin
President &v CEO
California Grocers Association

Jay Mc Keeman
Executive Vice President
California Independent Oil Marketers

John L. Dunlap
California Restaurant Association Bureau

William E. Dombrowski
California Retailers Association

Engine Manufacturers Association

California Manufacturers & Technology Assn

Comments Before the California Air Resources Board on the Proposed Airborne Toxic Control Measures for Transport Refrigeration Units

Staci Heaton
Director of Environmental Affairs
California Trucking Association
December 11, 2003

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,500 trucking companies and suppliers operating in and out of California. CTA is the second largest trucking organization in the world, providing comprehensive policy, regulatory

and legislative support to our member companies. Our members range from the one-truck operator to large international companies serving the public through safe and efficient goods movement, and provide 1 out of every 12 jobs in the state of California. CTA submits these comments in opposition to the California Air Resources Board's ("CARB") *Adoption of Proposed Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate* ("proposed regulation"), which was revised on October 28, 2003 and scheduled for consideration on December 11, 2003.

CTA is very concerned about CARB's proposed regulation and the impact it will have on California's refrigerated carriers. The proposed regulation effectively bans the use of current TRU equipment, requiring early retirement of refrigerated trailers currently in use in California, and creating an unreasonable expense to the refrigerated delivery industry. This would require operators of TRU equipment to purchase new trailers well before scheduled trailer turnover and thus would be changing the ownership standards of refrigerated trailers in California.

Furthermore, retrofit technology to comply with the regulation is not currently available, and will still be surrounded by reliability questions and warranty issues if and when it does become available to the end-user. The trucking industry still has not received satisfactory warranty requirements or in-use testing data on device failures from CARB on particulate traps currently verified for use in complying with CARB's retrofit mandates. This regulation would propose the use of technology that has neither been verified by CARB nor reviewed by the regulated industry.

Finally, the expansion of CARB's regulatory and enforcement authority to require the retrofit or replacement of TRUs operating in California is unrealistic, as CARB has no legal authority to regulate interstate trucks. Although CTA has repeatedly supported regulatory parity with other states, CARB would need to seek legal authority to regulate interstate commerce, which CTA believes violates the Commerce Clause and will not be achieved. In that event, this would become another single-state regulation, affecting only those trucks that base-plate in California. Furthermore, CARB's proposed regulation circumvents safeguards contained in the federal Clean Air Act (CAA) by establishing separate and inconsistent requirements on in-use TRUs. CTA believes the proposed regulation conflicts with federal and state law.

CTA requests that CARB delay adoption and implementation of the proposed regulation until more technology certainty is provided. With the significant number of technology, financial and regulatory questions remaining, CTA would like CARB to work more closely with the regulated industries to ensure the proposed concept is feasible, effective and appropriate. CTA's specific comments are as follows:.

1) CARB's proposed TRU mandate is contrary to California state law

CARB has failed to cite any specific authority to regulate TRU's, and in fact, has ignored sections of the law that specifically prohibit them from regulating used mobile sources. California Health & Safety Code Section 43600 states that while CARB is empowered to "adopt and implement emission standards for used motor vehicles for the control of emissions therefrom... the installation of certified devices on used motor vehicles shall not be mandated

except by statute."[1] There is no California statute that specifically mandates the installation of retrofit devices on TRUs. As a result, the proposed regulation directly violates California law and is, therefore, invalid.

2) CARB's proposed regulation is preempted under the federal Clean Air Act.

The California Clean Air Act establishes the authority to set emission standards for non-road engines (CAA Section 213). This gives EPA authority to impose regulations containing standards applicable to emissions from new non-road engines and new non-road vehicles that apply to the useful life of the engines or vehicles. Under the federal preemption provisions of CAA Section 209(e), states are prohibited from adopting or enforcing emissions standards applicable to "new non-road engines and non-road vehicles."[2] Congress provided California with limited authority to adopt and enforce emissions standards for new non-road engines and vehicles under CAA Section 209(e)(2), but only if certain conditions are met. These conditions include that any California standard and accompanying enforcement procedures are consistent with the federal standards and enforcement procedures.[3]

As noted above, the U.S. EPA and CARB (if CARB obtains a Section 209(e) preemption waiver) are statutorily empowered to adopt and enforce emission-control standards applicable to "new" non-road engines and vehicles. In the context of EPA's and CARB's emission standard-setting authority, a non-road engine or vehicle is "new" only until its legal or equitable title is transferred to the ultimate purchaser.[4]

Equally important, the end of EPA's and CARB's authority to adopt emission control standards does not mark the beginning of regulatory authority to enforce "in-use" emission control requirements against owners and operators. For regulatory purposes, an engine remains "new" longer than for emission standard-setting purposes. If that were not the case, non-road engines and vehicles could be subject to separate and inconsistent emission control standards the moment they are bought and delivered to the purchaser. That would clearly undermine any regulatory stability for non-road engines and vehicles and would effectively nullify preemption, and the express Congressional intent "to prevent a chaotic situation from developing in interstate commerce."[5]

As written, CARB's proposal will apply to non-road engines and vehicles that are still subject to federal preemption. Accordingly, the proposed rule is contrary to the CAA's express preemption provisions and is invalid and unlawful.

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[1] H&S Code § 43600.
[2] 42 U.S.C. §7543(e).
[3] 42 U.S.C. § 7543(2(e)(iii).
[4] See CAA Section 216(3); Cal. H&S Code §§ 43101, 39042.
[5] S.Rep.No.403, 90th Cong., 1st Sess. 33 (1967). See Allway Taxi, Inc. v. City of New York, 340 F.Supp. 1120, 1124 (S.D.N.Y. 1972), aff'd, 468 F.2d 624 (2d Cir. 1972) (per curiam). See also Amicus Brief of the United States, EMA v SCAQMD, et al., Sup.Ct. Case No. 02-1343 (Aug. 29, 2003); 59 Fed Reg. 36974, col.3 (July 20, 1994) (For preemption purposes, the term "new" covers an engine until "after a reasonable amount of time has passed and the engine is no longer new (most likely when an engine is being rebuilt)."); 40 CFR § 85.1603(c)(2) (an engine remains new for preemption purposes until after the end of its useful life).

3) **The proposed regulation is cost prohibitive and will impose a negative economic impact on the refrigerated goods industry**

The proposed regulation will have a severely negative economic affect on every refrigerated carrier in California. Compliance costs are expected to include, at a minimum, vehicle out-of-service time, capital cost of equipment and installation, annual maintenance and, if necessary, additional fuel use. CARB anticipates initial capital costs ranging from $2,000 to $22,000 per unit, depending upon which compliance method is chosen. Annual costs, which include operating and maintenance costs, are estimated to range from $0 to $6,133 per unit. Overall, CARB anticipates the total cost to TRU owners, 80% of which are small businesses, will range from $87 million to $187 million. However, since viable retrofit technology is not available, it is impossible for CARB to provide an accurate cost analysis to the regulated community and to the Board for consideration at this time. Any cost analysis performed at this point should and can only consider the cost of complying by purchasing a new trailer. This is cost prohibitive, as new refrigerated trailers cost $20,000 and up.

If retrofit technology is available by the 2008 implementation date, the proposed regulation further places cost burden on the truck owner by mandating the use of the BACT in the event of a emission control device failure. Emission control devices are proving to be unreliable in real, in-use applications. Since retrofit technology for TRU's is unavailable and untested, this is even more problematic in the context of this regulation. Warranty protection from CARB's verification procedure is already inadequate, so the trucker will be left with the responsibility and cost of upgrading to a more expensive technology without compensation. CARB-verified retrofit technologies currently in use in other states are proving unreliable in every day applications (see attached Washington Post article). CARB should postpone this regulation until the actual reliability and costs of this technology can be verified for in-use engines.

CTA believes that a more complete and realistic cost analysis is needed before this regulation is ready for Board action. This measure will have extreme economic consequences for California businesses and will help CARB continue to drive our industry to other states.

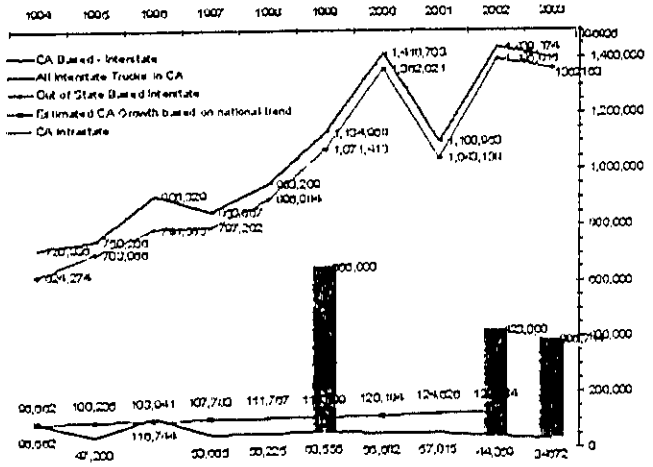
4) **CARB's efforts to regulate TRUs used by trucks involved in interstate commerce violate the Commerce Clause and are therefore unconstitutional.**

CTA supports national regulatory uniformity among all states, which is why we worked closely with CARB to achieve national fuel and new engine standards. However, CTA feels that, since CARB does not have the authority to regulate interstate trucks, the proposed regulation will be another single-state mandate that will affect only trucks that register in California.

The U.S. Supreme Court has repeatedly recognized that specialized state requirements that unduly burden interstate commerce violate the Commerce Clause. The Court has been especially concerned with state regulations that have the effect of regulating conduct occurring wholly outside the state's borders. CARB's provisions to include interstate trucks in the proposed regulation impose a significant cost on interstate refrigerated carriers and dictate equipment purchases outside of California's borders.

CARB's staff report indicated that approximately 7,500 out-of-state TRUs operated in California in 2000.[6] Because TRU's are not registered, CARB arrived at this estimate by assuming the same population ratio of out-of-state registered trucks to California registered trucks (33%) used in their emissions model.[7] However, the following chart compares recent California and out-of-state based truck registrations:

Interstate Registration Data by Base Plate
Interstate Registration Program (IRP) Website



Clearly, out-of-state trucks traveling into California outnumber California based trucks by an approximate 3 to 1 margin. The emission benefits of the regulation in terms of its application to out-of-state motor carriers would be outweighed by the substantial financial burdens the regulation would impose on those carriers. As such, the regulation would violate the Commerce Clause and this will be yet another single-state regulation.

5) The proposed regulation will devalue existing TRUs and increase financing costs.

Existing TRUs which prematurely have their engines or units replaced will forego a portion of their operating life and face shorter financing periods. In the first case, CARB is essentially devaluing existing TRUs that are more than seven-years-old. While these TRUs will retain value outside of California (although the proposed regulation could reduce values outside of California by increasing the availability of California-outlawed TRUs), any unit operating within California will not be in compliance (unless retrofit technology is available) and, therefore, will have its economic value taken by the State. To offset the cost of devaluation, a funding source should be identified and used to assist owners of TRUs with the retrofit or replacement of their existing equipment.

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[6] CARB, *Notice of Public Hearing to Consider the Adoption of Proposed Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate*, p. V-2 (October 28, 2003).

[7] CARB, *Appendix D: OFFROAD Modeling Change Technical Memo, Revisions to the Diesel Transport Refrigeration Units (TRU) Inventory*, p. D-9 (October 28, 2003).

With respect to shortened financing periods, owners of TRUs will be faced with shortened financing periods to payoff their capital costs. This will result in higher principal and interest payments for purchasing new TRUs prior to 2013 when federal "long-term" Tier 4 standard go into effect. If these higher costs are not absorbed within a 7-year period, TRU owners will be making payments on equipment which has no value in California or they will be making double payments (i.e., payments on existing equipment as well as retrofit or replacement equipment). The net result of this transaction is that TRU owners will need to accelerate payment on their existing units to ensure they do not end up with double payments for their equipment. Once again, a funding source should be identified and used to assist owners of TRUs with the replacement or retrofit of their existing equipment.

6) The proposed regulation lacks enforcement provisions.

As presented, the proposed regulation makes no mention of what enforcement mechanisms will be used or what penalties are associated with violations. Their self-admitted budget issues limit CARB's current enforcement capabilities in regulations that are already in effect. The proposed regulation provides no guidance as to who is ultimately responsible for ensuring compliance with the proposed regulation. CARB must further define compliance provisions prior to moving forward with the proposed regulation.

In conclusion, CTA believes that CARB should postpone the proposed TRU regulation for further review in accordance with Governor's Executive Order S-2-03. The regulation is cost-prohibitive, detrimental to California's refrigerated trucking industry, and lacks adequate cost analysis. While CTA supports CARB's attempts to make the proposed regulation fair for all truckers in the state, CARB's regulatory authority is not broad enough to help us maintain fair competition with out-of-state carriers when complying with this regulation. This regulation violates the Commerce Clause and will force the industry to spend hundreds of million of dollars on unproven, speculative technology. CTA opposes the regulation in its entirety and requests that it be postponed for further review.

The Washington Post

Friday, November 21, 2003

Metro

Metrobuses Plagued by Reliability Problems

Lyndsey Layton
Washington Post Staff Writer

Metrobuses have been breaking down more frequently, getting in more accidents and, in some cases, not starting up at all over the last 12 months, leaving passengers waiting at bus stops throughout the region. Metro officials said that several factors are driving down reliability of the 1,450 Metrobuses in its fleet and that the problems will probably continue through the winter, when harsh weather typically hurts mechanical performance. Metrobuses carry nearly as many passengers as the rail system; riders took an average of 533,000 daily bus trips last month.

One major problem sidelining buses is a new filter being installed on diesel buses that is designed to catch particulate matter, or soot, that pollutes the air and causes respiratory problems. The filters, made by Detroit Diesel, are clogging prematurely and causing engines to shut down, said Phillip C. Wallace, Metro's general superintendent for bus maintenance.

When the filter clogs, the bus must be taken out of service for about a day while the filter is cleaned or a new filter is installed, Wallace said. About 300 of 900 diesel buses have been fitted with the filters. Metro has stopped installing them until the filter manufacturer fixes the problem, Wallace said.

Metro also has been pulling buses from service to install new radios, upgrade hydraulic systems and replace leaking hoses. While that work is being done, those buses are replaced on their routes by 17-year-old buses that have been "pulled out of mothballs" and have a tendency to break down, Wallace said.

Meanwhile, Metro has endured a "massive" turnover of mechanics, who perform the major repairs, and shifters, who perform daily maintenance such as replenishing fluids, Wallace said. As a result, work crews are relatively inexperienced and mechanical work takes longer, he said.

The result is that increasingly, Metrobuses never make it out of the garage to serve their scheduled route and roadside calls for mechanical help are made from an operator in a broken-down bus. In addition, buses are traveling 5,040 miles between breakdowns; the agency's goal is to have buses travel 6,300 miles between breakdowns. Wallace said he doesn't expect any improvement in the mechanical performance of the bus fleet until the spring.

Accidents involving Metrobuses are becoming more frequent. The agency's goal is an accident rate no higher than 3.4 for every 100,000 miles of service. But the rate has been increasing steadily since May, reaching 5.4 accidents per 100,000 miles last month.

A management task force is trying to determine why Metrobus drivers are having more accidents.

One reason offered by managers is the inexperience of bus operators. About 41 percent of bus operators have less than three years' experience. That group accounts for 58 percent of the accidents, said Jack Requa, Metro's chief operating officer for buses.

Tangee C. Mobley, Metro's general superintendent of bus transportation, said that the agency is expanding training for new operators and is looking at a range of issues -- where accidents occur, at what time of day, on which lines -- to better understand the problem and find ways to reduce accidents.

The rail system faces some reliability problems, said Lem Proctor, Metro's chief operating officer for rail. The transit system continues to have difficulties with its newest rail cars, the Spanish-made CAF cars. CAF's work has been marred by balky software, assembly plant problems and other difficulties that have delayed delivery of 192 rail cars by nearly two years. Metro has 178 of the rail cars and expects the remainder by February, Proctor said.

The CAF cars, distinctive for their red, white and blue interiors, are plagued by chronic problems with doors, brakes and automatic train control. On any given day, about 30 percent of the cars are sidelined because of those problems.

The cars are not meeting Metro's reliability standards, which call for rail cars to travel 72,000 between breakdowns. The CAF cars are running about 40,000 miles between breakdowns, Proctor said.

As a result, Proctor said, Metro has put on hold a plan to add seven trains during peak hours on the Red Line, which is the heaviest-traveled Metro line.

March 27, 2003

Catherine Witherspoon
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Draft TRU Airborne Toxic Control Measure (ATCM) Overview

Dear Ms. Witherspoon:

The members of the California Trucking Association are concerned with the California Air Resources Board's actions to date on the proposed regulatory approaches to reduce particulate matter emissions from Transport Refrigeration Units (TRU's). Your agency keeps forging ahead while basic questions have remained unanswered or only loosely explained.

The most important area that you have ignored is industry's request for a legal analysis regarding the regulation of interstate TRU's. Without this key legal framework, your proposed regulation has no legs to stand on. We asked in an email sent to Dan Donohoue on September 17, 2002 that under the Public Information Act, you provide this legal analysis to all stakeholders and allow us adequate time to comment on it. We were told that your staff has had numerous conversations with CARB legal staff on this issue, but that a written analysis did not exist. At every workgroup meeting since then, the legal issue has been raised and still we have not received a written analysis. Please consider this letter another formal request for you to provide that information to the public and interested stakeholders. CARB does not have the authority to mandate that interstate trailers comply with these regulations. As proposed, this regulation further penalizes California businesses by making facility owners responsible for policing their yards to make sure that all trailers coming in are in compliance.

CTA's members have other concerns regarding the draft TRU ATCM that your agency needs to address before the rulemaking process continues. Your agency has not proven that new and retrofit TRU technologies have been demonstrated as proven and commercially viable, nor have the changes to the TRU emission inventory been clearly explained. Corrected and updated slides that explain your tons per day calculations that were promised at the March 6th meeting have still not been sent to participants. Additionally, as compliance dates are not finalized yet, we strongly suggest that any low sulfur diesel fuel requirements be in line with the national adoption of 15-ppm sulfur fuel in 2006.

The concepts proposed thus far in TRU ATCM process are an unfair and most likely illegal method for gaining very little in particulate matter emission reductions. The equipment costs, fuel requirements, technology advancements, facility requirements, and ability of your agency to mandate a rule like this are all very serious concerns that your agency can not afford to ignore in the early stages of the rulemaking. If your staff is going to proceed with their schedule and present a regulation to the Board in October, you have a lot of work left to do to make this a workable solution.

CTA would be happy to sit down with your staff and make detailed comments on the concepts in the proposed ATCM. If you have any questions, or would like to discuss this issue further, please contact me at (916) 373-3548.

Sincerely,

Stephanie Williams
Vice President

Cc: Tony Andreoni, California Air Resources Board
Rod Hill, California Air Resources Board

October 1, 2003

Dr. Alan Lloyd
Chairman
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on the Proposed Amendments to the Diesel Emission Control Strategy Verification Procedures – Mail-Out #MSC 03-08

Dear Chairman Lloyd:

The California Trucking Association (CTA) is a non-profit trade organization representing nearly 2,000 companies and suppliers operating trucks into and out of California.

CARB never satisfactorily addressed CTA's concerns with the warranty issues surrounding retrofit devices during the process to adopt the Retrofit Verification Procedure. With the release of the Proposed Amendments to the Diesel Emission Control Strategy Verification Procedures (Mail-Out #MSC 03-08), CARB has not only failed again to address industry concerns, but has actually taken a large step backwards for consumer protection, and an even larger step backwards for national consumer protection when the retrofit program fails. CTA is disappointed that your agency's final version of this rule has been promulgated while you hide behind the Public Records Act and deny access to data that is pertinent to warranties on emission control devices. We are denied relevant data, yet the rule moved ahead and is now being amended to even further favor the manufacturers of retrofit devices. CTA continues to oppose the Retrofit Verification Procedure and opposes the proposed modifications in their entirety.

The final draft of the verification procedure contained at least fourteen references to language changes or staff clarifying procedures to "lessen the financial burden of the applicants" or to "reflect stakeholders' concerns," all of which benefit the retrofit manufacturers, not the end-user. Moreover, your agency refers to retrofit manufacturers as "applicants" to avoid the blatant bias against the purchaser. As amended, the warranty suggested in this rulemaking promotes devices that are untested and allow manufacturers to walk away from liability on vehicles that they would be held to anywhere else in the automotive industry. The warranty requirements described in the verification procedure are cost prohibitive, scientifically flawed, and a giant step backwards for consumer protection. The trucking industry will not serve as the guinea pigs for retrofit. Below is a summary of our comments, which also reflect our comments on all of the proposed changes made to the Retrofit Warranty since the initial version presented at the May 16, 2002 hearing:

- **The California Air Resources Board's (CARB) proposed amendments to the Retrofit Warranty absolve manufacturers of emission control devices (ECD) of almost all warranty liability.**

- **CARB has failed to provide the operational data for test vehicles by hiding behind the Public Records Act, and is acting illegally in promulgating a final rule.**
- **CARB has failed to provide cost effectiveness criteria in comparing the high costs of traps to the cost of other measures.**
- **The warranty provisions for retrofit devices are unacceptable and lack consumer protection.**
- **Market behavior will cause truckers to avoid new truck purchases and change their operating practices to avoid the high costs and threat to their businesses.**
- **The definitions and specifications of the Retrofit Warranty are arbitrary and capricious.**
- **The additional warranty report and in-use testing requirement incentive prematurely released and untested emission control devices.**
- **Relaxing the NOx test cycle to make the verification process less expensive promotes off-cycle emissions and threatens the federally mandated State Implementation Plan.**
- **Lack of durability testing on retrofit devices overestimate emission reductions and creates incentives for untested and unproven emission control devices.**
- **CARB's Retrofit Warranty places the motoring public at risk of increased truck accidents and injury.**
- **Diesel particulate filter (DPF) technology is not ready for commercialization**
- **CARB agreed to a national fuel standard of 15-ppm sulfur diesel fuel. Referring to the 10% aromatic standard for this fuel is a serious departure from a national fuel standard.**

CARB has been strong-armed by manufacturers who refuse to take responsibility and liability for their untested products. The financial burden of Fortune 500 companies that make particulate traps must be weighed against the trucking industry that is made up of small businesses who operate on a 1% to 2% profit margin. The financial obligations of this rule means bankruptcy for the average California trucker. It is your agency's responsibility to protect consumers and consider all aspects of the verification procedure. It is not your responsibility to rush ahead with retrofit by drastically reducing the durability and testing requirements of manufacturers.

The California Trucking Association respectfully requests the denial of the proposed amendments to the Retrofit Verification Procedure.

Sincerely,

Stephanie Williams
Vice President

SRW: sle

Attachment

Cc: Members of the California Air Resources Board

Comments on the Proposed Amendments to the Diesel Emission Control Strategy Verification Procedures (Mail-Out #MSC 03-08), October 1, 2003

The California Trucking Association would like to submit formal comments on the Proposed Amendments to the Diesel Emission Control Strategy Verification Procedures (Mail-Out #MSC 03-08) herein after referred to as the "Retrofit Warranty." Our comments also reflect all of the proposed changes made to the Retrofit Warranty since the initial version presented at the May 16, 2002 hearing, which remain unworkable and create risk and liability for the end-user. Retrofit without an acceptable equipment warranty would cause CTA to seek a legislative fix to the problem with a "lemon-law" for these untested, unproven devices.

1. The California Air Resources Board's (CARB) proposed amendments to the Retrofit Warranty absolve manufacturers of emission control devices (ECD) of almost all liability where warranties are concerned.

As forced purchasers of ECD's, the California trucking industry needs full warranty protection for any damage retrofit devices may cause to engines, equipment, AND vehicles. The proposed amendments to the Retrofit Warranty have absolved ECD manufacturers of all liability for damage their devices may cause to equipment or vehicles. Since the full operational data for test vehicles showing engine failures and vehicle damage has never been made public, CTA is greatly concerned that its members will be liable for unrecoverable costs associated with retrofit.

In addition, these changes make necessary an additional, complete cost analysis of all CARB regulations that mandate retrofit devices, including the Board-adopted Solid Waste Collection Vehicle rule and all subsequent regulations that are already in the rulemaking process or proposed in the future. CTA was not satisfied with the economic impact analysis accompanying the waste rule, and since the proposed amendments take away consumer protection almost completely, we would ask for a complete economic impact analysis for all rulemakings associated with retrofit devices.

2. The California Air Resources Board (CARB) has failed to provide the operational data for test vehicles hiding behind the Public Records Act, and is acting unlawfully in promulgating a final rule.

The California Trucking Association has been closely following the rulemaking procedure involved with the proposed Solid Waste Collection Vehicle Rule and believe your agency has not been forthcoming with the supporting data. The feasibility of the Retrofit Warranty depends on whether or not these engines can maintain the exhaust temperatures necessary to operate the traps efficiently.

This data is in your possession. On December 10, 2002, we requested it through the Public Records Act. On December 19, 2002, you denied our request and stated that "...ARB may withhold records that are draft or preliminary. It was made clear at the workshop that the summarized data were preliminary and that the project is ongoing. The data are not yet complete, and they have not been reviewed, quality-checked, or otherwise made final. In addition, the ARB finds that at this time, the public interest in withholding the records outweighs the public interest in disclosing the records."

You can't have it both ways. We have first hand knowledge that these devices are failing and that the operating temperatures are unpredictable. To withhold information that is so key to the Retrofit Warranty issue is unethical and puts California truckers at risk of financial burden. It is also unlawful to withhold key information, yet still proceed with a rule making. We ask that you release that data so we can provide meaningful comment on this issue.

3. CARB has failed to provide cost effectiveness criteria in comparing the high costs of traps to the cost of a new engine.

The assertion in the verification procedure that "...because no direct emissions benefits are associated with the staff's proposal, no traditional cost effectiveness can be calculated[8]" is irresponsible during a major economic downturn in California. Trap manufacturers, engine manufacturers, installers, and now the California Air Resources Board do not want to take responsibility for technology and equipment that are unproven, cost prohibitive to consumers and have failed in field operations conducted by CARB.

The market price for a diesel particulate filter (DPF) is $35-$50 per horsepower. Include the initial start up costs to take a truck out of service to install the device; the capital cost of the device and back pressure monitor; the labor costs to install the device, remove the muffler and install the backpressure monitor; the cost of training drivers and maintenance personnel; and the incremental cost of $0.15-$0.25 per gallon for the 15-ppm diesel fuel and transportation of that fuel; all add up to a price that cannot be justified by any reasonable cost effectiveness criteria. Asking the California trucker to wait and see how much this scheme will cost is irresponsible. CARB is required by law to provide this information as part of the rulemaking for all of the retrofit rules, and the verification procedure is the backbone for every rule to come. This omission is in direct conflict with the directive from the Board on May 16, 2002 and their concerns regarding costs.

The following is a modest estimate of potential costs for a mid-size company owning 25 trucks and employing 40 people including shop, office and drivers. The gross revenue is 1.8 million and the net revenue is 2%. Assuming the trucks operate only a single shift, run no more than 10 hours (with drivers working under 12 hours per day and 2000 hours per year, which is the standard union contract) running an average of 120,000 miles per year, these are the results:

Device Cost	**Cost of an out of Service Truck**	**Back Pressure Monitor Cost**	**Device Installation**	**Backpressure Monitor Installation**	**Training Costs**	**Fuel Costs** 250 mi/day @ 6 mpg
$9500 x 25	$1000/day x 25/day	$1500 x 25	$500 x 25	$500 x 25	$500/ person x 30	$0.25/gal X(120,000 mi./yr.÷6mpg) x 25
$237,500	$25,000	$37,500	$12,500	$12,500	$15,000	$125,000.00/yr
					Total	**$465.000**

[8] Page 3, Item #3 of Resolution 02-23

This means that the $36,000 profit that this company makes in a year (if they are lucky enough to reach a 2% profit margin) is short $429,000 if they are required to retrofit, or they are out of business if forced to comply with this rule. Imagine what this would do to the average trucking company in the state who operates 10 trucks.

4. The warranty provisions for retrofit devices are unacceptable and lack consumer protection.

The fatal flaw with the Retrofit Warranty is the serious and egregious lack of consumer protection -- the end-user is no longer protected because of mandatory state modifications to engines. The warranty outlined in the verification procedure for emission control devices triggers a reprieve from all liability for manufacturers and delegate all liability and responsibility to the consumer. This is unprecedented for the purchaser of an automobile; one would ask why it is even considered for a heavy-duty vehicle? A 150,000-mile warranty is just over 10 months on a truck used for two shifts a day, yet the cost of the capital investment is not reflected in the length of the warranty. Face the facts: the proposed emission control devices are near the cost of a new engine, not comparable to historical emission control devices, and by themselves, not cost effective. Including 5 years in the same phrase with 150,000 miles is misleading and lacks any research regarding the operations of the trucking industry. A standard warranty of 150,000 miles or 1 year clearly does not reflect the actual cost of the emission control device, nor does it protect the end-user.

5. Market behavior will cause truckers to avoid new truck purchases and change their operating practices to avoid the high costs and threat to their businesses.

The Retrofit Warranty for emission control devices will have strong market rejection. Fleet operators will avoid retrofitting older engines due to inability to afford the capital cost, leaving dirtier engines on the road longer. The market response will be to base-plate elsewhere if possible, or utilize one-truck owner-operators who don't have access to the fuel and are therefore exempt.

The emission control devices are unproven in long-term, daily, trucking operations and the short warranty period will hinder user acceptance of the devices. Purchasers will be hesitant to purchase new vehicles, as their investment will be subject to nullification by engine manufacturers as they modify new engines. The net result is environmental detriment as the market behavior takes precedent.

CARB has failed to recognize the economic costs to California due to the mass exodus of vehicle registrations that have changed their base-plate, yet still operate the majority of their miles in California. Since January 2000, more than 250,000 vehicles have left the California to base-plate in another state. This fact has caused serious financial problems for the state as the revenue lost is recognized at over $250 million.

6. The definitions and specifications of the Retrofit Verification Procedure are arbitrary and capricious.

The definitions and specifications outlined as warranty requirements are vague and biased towards the manufacturer benefit and the end-users detriment. The failure to define a process for

disagreement demonstrates how seriously flawed the verification process is. Allowing the manufacturer to pay an undefined "fair market value" of damaged engines, which occur due to known problems with operating temperatures and cycles, leaves all the discretion and benefits to the manufacturers and places unprecedented costs and burdens on the end-user. Any proposal that impacted the warranty on passenger vehicles the way that this proposal impacts trucks would cause a public outcry. That same outcry should be expected from the trucking sector.

7. The additional warranty report and in-use testing requirement incentive prematurely released and untested emissions control devices.

The additional warranty report and additional in-use testing requirements provide an incentive for companies to not spend the necessary resources on product testing. A 4% failure rate is unacceptable. This failure rate accompanies backpressure and serious damage to the engine. When you release the manufacturer from thorough product testing on the front end, the last thing that should be considered is increasing the allowable fail rate on the back end. Even the initial 2% proposed fail rate is not protective of the consumer. This is not a laboratory experiment, these are vehicles dispatched to move California's freight. Consumers should not be burdened with higher thresholds so that manufacturers have less paperwork. The trucking industry will not serve as a guinea pig for CARB!

8. Relaxing the NOx test cycle to make the verification process less expensive promotes off-cycle emissions and threatens the federally mandated State Implementation Plan.

The loophole that manufacturers have requested, and that CARB proposes to grant, is directly related to durability and reliability of the emission control technology. Federal highway funds are at stake when NOx emissions are increased. Particulate matter emissions cannot be reduced at the expense of NOx.

To identify high NOx emission conditions that are not typically observed during standard test cycles, it is necessary and protective of public health to use as many test cycles as possible. To reject the additional test cycle that triggers all defeat devices because it is too thorough and may cost too much is irresponsible. Identifying all of the operating parameters that give rise to high NOx conditions are an important part of the verification procedure.

9. Lack of durability testing on retrofit devices overestimate emission reductions and creates incentives for untested and unproven emission control devices.

The minimum durability requirements outlined in Section 2704 are too low, don't reflect average use, and create a financial incentive to put out unproven technology. The federal EPA would not allow engine manufacturers to provide engines for sale with unproven durability requirements, why should CARB be allowed to? The better question would be why would CARB want to. CARB should mirror the federal requirements for engine testing due to the high cost of the emission control strategy, which is much closer to the cost of a new engine that a traditional emission control device.

The modifications to the data-logging requirement during service accumulation should not be at the discretion of the Executive Officer and the manufacturer. A maximum sampling period should be specified and adhered to protect the consumer. It defeats the purpose of device

verification, which is to make sure that an affordable, viable emission technology is available to the end-user who is mandated to procure the device. Again, CARB is not protecting the consumer.

10. CARB's Retrofit Warranty places the motoring public at risk of increased truck accidents and injury.

Back pressure monitors that are monitored by truck drivers who are trained that the engine could be damaged if the device fails creates a burden on public safety. Drivers can't monitor uncontrolled regeneration or unfavorable operating conditions. Since "proper maintenance" was not defined and is at the discretion of the manufacturer, the consumer is burdened by delegation of the identification of all safety issues after a device has already been verified. To delete "all" from the requirement that applicants completely discuss potential safety issues is irresponsible and not protective of consumers. While the staff's intent may have been to eliminate the manufacturers responsibility to analyze each scenario for safety issues, making the language less restrictive leaves room for manufacturers to fail to complete their due diligence.

11. Diesel particulate filter (DPF) technology is not ready for commercialization.

PM reductions from exhaust aftertreatment rely on sustained exhaust temperatures and constant backpressure monitoring. A simple change in the route a truck drives could impact the backpressure. Devices this sensitive to everyday, real world duty cycles are not ready for commercialization. They are laboratory tested, not field-tested. While several technologies look promising, no single technology is proven to work on every engine family. The modifications CARB has been pressured to make by manufacturers demonstrates that they do not stand behind their products, don't want to be responsible for them and intend to place all liability on the end user.

Additionally, NO2 and non-methane hydrocarbon (NMHC) emission concerns need to be addressed. While PM reductions are the focus of the retrofit rule, relaxing other pollutant emission limits is unacceptable. Relaxing the NO2 emissions limit because manufacturers have made substantial investments in technologies that don't meet the current standards are unacceptable. Manufacturers should re-design their systems to be compliant with the NO2 limit before their device is verified and should not sell their ozone increasing products in the state. NO2 is a serious health concern and a visual impairment. Any relaxation of standards should be considered only after an Environmental Impact Statement is completed to show the potential effects on air quality in California.

NMHC's also pose a serious threat to ozone in California. To allow short-term implementation of technologies that achieve significant PM reductions at the expense of NMHC's is again, irresponsible and should have an Environmental Impact Statement performed to assess the consequences on California's SIP. A strategy should not be considered a "promising strategy" until it effectively reduces pollution, without unintended increases in federally regulated pollutants. CARB should stop trying to reduce costs to manufacturers with regard to durability, verification and the allowance of increased alternative emissions and hold the manufacturer responsible for a safe, environmentally friendly and commercially viable emission control device.

12. CARB agreed to a national fuel standard of 15-ppm sulfur diesel fuel. Referring to the 10% aromatic standard for this fuel is not only a false standard, which was never implemented, but also a serious double-cross to the trucking industry in California.

Diesel fuel is the lifeblood of goods movement. In 1988, CARB promulgated a more stringent diesel fuel standard to take effect October 1993 for purchasers of diesel fuel in California. CARB did not contemplate the unintended environmental and economic consequences of a "California-only" boutique fuel that requires aromatics to be limited to 10% aromatic hydrocarbon content. This standard is in addition to the federal limit of 500 parts per million sulfur.

The standard that your agency adopted was so stringent that oil companies could not produce the fuel at a price that the market could bear. CARB revised their regulation before implementation to allow refineries located in California, and producing diesel fuel, to comply with the cleaner standard by approving alternative fuel formulations. Without the alternative standard, CARB diesel would be infeasible due to high costs and short supplies[9], yet the alternative standards are not public information and considered trade secrets[10], isolating Fortune 500 oil company practices from public scrutiny. CARB's alternative formulations allow standards to be set while the trucking industry is denied information and knowledge of the standards.

CARB admits that the 10% aromatic standard is not offered for sale in California[11]. The current system is an underground regulation that benefits oil companies with refineries in California, who are given special standing to obtain approval for fuel formulas; only these companies can bring fuel in from other regions or countries which impairs the free market. Consequently, California's fuel market is closed and these companies can afford to ship complying fuel during times of short supply from their international refineries.

A national fuel standard is the answer to breaking up this government sanctioned and protected mature oligopoly. A national standard and open market would bring fuel price parity to California truckers and eliminate the threat of boutique fuels in other states for interstate carriers.

The unintended consequence of arbitrarily limiting fuel supply to just refineries with operations in California has caused increased and unnecessary diesel pollution statewide. CARB's model is not designed to capture the market behavior of what competitive trucking companies will do to avoid the high and volatile pricing inherent to California-only diesel fuel:

1) Since 1993, trucks drive more miles to purchase cheaper federal fuel. Fueling facilities are booming at California's borders as more and more trucks operate from just outside the state. More trucks come into California from out of state because they can offer cheaper service, even after they drive a few extra hundred miles to enter the markets.

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[9] "The alternative certification procedure was adopted to provide refiners with the flexibility to produce fuel with at least the same benefits at a lower cost to consumers." Quote taken from a July 3, 2001 letter to CTA from CARB in response to several questions that CTA asked in a May 4, 2001 letter.

[10] Only the aromatics, sulfur, cetane number, PAH, and nitrogen properties of the fuel formulations are not considered "trade secrets." From CARB's July 3, 2001 response letter.

[11] Also from CARB's July 3, 2001 response letter.

2) A recent survey of intermodal carriers shows that companies will drive an average of 42.7 miles out of their way for cheaper fuel. In fact, there are many software and web-based programs designed to plan trucking routes around where to get the cheapest fuel. With one of these web-based programs, we found that when given routes to 14 different cities throughout California from Phoenix, Portland, and Reno (keeping in mind that Nevada uses CARB diesel), the program only suggested California fuel stops along three of the routes. All other suggested locations for fueling were out of state, and the California fuel stops only came up when the route was from Reno[12].
3) Diesel fuel prices in California average 25-40 cents higher than the national average. California shippers are not required to contract with California based trucking companies that use California fuel. The freight market rates don't reflect the inflated costs of California-only fuel.
4) CARB has no regulatory authority to prevent interstate trucks from using federal fuel and providing lower rates to California shippers. Interstate registration has grown to 1,890,000 compared with just 340,00 intrastate trucks. There is an economic incentive to fuel up outside the borders of California and operate in California without fueling.
5) Companies based in California face economic hardship and an abnormal rate of bankruptcy. Truck turnover has slowed down as companies manage to stay solvent by keeping vehicles longer. Profit margins as low as 1-2% are now the industry norm.
6) Of the 100 largest trucking companies in the United States, only three are based in California.[13]
7) Southwest Research Institute, an independent research organization, has found that the alternative formulations approved by CARB do not reduce pollution and increase emissions in later model (1994 +) engine technology.

The California Trucking Association made national news fighting for the adoption of a national fuel standard. After successfully rolling back Rule 431.2 (the South Coast Air Quality Management District's 2004, four-county early diesel fuel reformulation) and advocating these standards nationally at the request of the California Air Resources Board (CARB), it looked like we were on track to a nationwide diesel fuel.

Unfortunately, the circumstances have changed. Your agency is, once again, trying to establish a "California-only" diesel fuel formulation by refusing to eliminate their 10% aromatic standard, which federal diesel fuel (in 2006) is not required to have. In a letter to CTA and the Farm Bureau dated April 27, 2001, CARB says, "Rather than rescind part of ARB's fuel regulations, a better approach would be to convince U.S. EPA to adopt additional, equivalent standards."

Here is a chronology of our national fuel standard effort:

Early 1999 – CARB appeared before CTA's board and asked us to support EPA's proposed 30-ppm national diesel standard.

July 13, 1999 - CTA and CARB sign a joint letter to the U.S. EPA recommending *"a single specification be set for all motor vehicle diesel fuel."*

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[12] Our example is from www.mile.com by Prophesy Transportation Solutions, Inc. whose fuel price data is provided by T-Chek.

[13] Based on the "Transport Topics 2001-2002, Top 100" list from the July 22, 2002 issue that ranks the largest trucking companies in the United States.

July 29, 1999 – CTA submits comments supporting 15 parts per million diesel sulfur limits to take effect in 2006.
December 21, 1999 – Carol Browner, EPA Administrator finalizes the standards.
February 6, 2001 - CARB holds the 1st Fuels Workshop to discuss "updating diesel fuel certification fuel specifications" (translation = creating a state-only fuel for 2006)
February 28, 2001 - Christine-Todd Whitman signs the new standards.
March 22, 2001 – California Farm Bureau Federation and CTA send joint letter requesting a California diesel fuel standard that is a "mirror image" of the national fuel standard.
April 5, 2001 – CARB holds 2nd Fuels Workshop, not clarifying how a national standard is reached with the plans CARB proposes.
April 25, 2001 – CARB, when asked about the national fuel standard, responds that they are harmonizing and that they understand the difficulty for California carriers.
April 27, 2001 – CARB Chairman Alan Lloyd responds to the CTA/California Farm Bureau Federation joint letter, stating *"California simply cannot afford to lose the air quality benefits achieved by CARB diesel. We believe that seeking stronger national standards, similar to the World –Wide Fuel Charter's recommendations for advanced technology requirements, is a better approach.*[14]*"*
July 3, 2001 - From CARB's response letter to CTA:
"We maintain that it would be in the nation's and California's best interest that the U.S. EPA adopt a diesel rule that provides emission benefits that are comparable to those provided by California diesel requirements."

CTA joined with CARB, national environmental groups and engine manufacturers to secure a national clean fuel. CTA attended and testified at three of the five federal hearings in support of the federal EPA's diesel rule. CTA has attended numerous press conferences in Washington D.C. to stop the rollback of these standards.

Worse yet, your agency has announced it will mandate retrofit of 12% of the fleet that is based in California, that is the few trucks that are still registered in the state. This rule would require 15-ppm diesel fuel earlier that the federal government's requirement of 2006. In 2006, in conjunction with the federal adoption of the low sulfur diesel fuel, you will attempt to require an additional aromatic standard for California's fuel despite the fact the science does not support emission reductions. CTA is opposed to this action and demands a mirror image of the federal diesel fuel standard for 2006 with no exceptions to include retrofit. CARB should keep up its end of the bargain.

Presently, your staff cannot demonstrate that proposed diesel emission control strategies will be able to achieve real and durable PM reductions. The changes in the Retrofit Warranty language promote technologies with poor durability, performance results and consumer protection.

Your agency has a responsibility to protect the public and to provide reasonable, economically feasible solutions to emission control. The commercialization of products that don't work, damage engines, and require laboratory operation with no warranty unless truck drivers to operate the vehicle like the laboratory cycle, is bad public policy. In your attempt to grasp at emission reductions without consideration of the consumer, you fail to see the real financial

[14] CARB's recommendations are based on the World-Wide Fuel Charter's "Category 4" fuel quality standards.

consequences to forcing technology that is not ready for market. These actions will put trucking companies out of business if they attempt to comply and harm the delicate balance of goods movement in our state.

December 11, 2003

Alan Lloyd, Chair
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812

RE: Public Hearing to Consider Adoption of the Heavy-Duty Diesel Engine Software Upgrade Regulation (Chip Reflash)

Dear Dr. Lloyd:

The California Trucking Association has concerns with the California Air Resources Board's (CARB) proposed adoption of the Heavy-Duty Diesel Engine Software Upgrade Regulation (Chip Reflash). At this time, CTA would like to carefully express our position on the regulation. We have a problem with the concept of going back on a promise. The Consent Decree is a promise between CARB and the engine manufacturers. Your agency made a similar promise to our Board of Directors to seek a national fuel standard. That said, we feel these emissions reductions are "low hanging fruit" at a time when emissions reductions are hard to come by. We want to be proactive in obtaining near-term emissions reductions voluntarily.

The chip reflash regulation violates the Consent Decree that CARB negotiated with engine manufacturers. The terms of that agreement were that engine software would be upgraded at the time of rebuild at no cost to the operator. The proposed chip reflash regulation would require all engines to be reflashed in 2004, and includes the caveat that truck owners may have to pay a minimum of one hour of labor to have the software installed. This is unacceptable to CTA. Additionally, the regulation will require truck owners to take their trucks out of service, not during regularly scheduled maintenance. This will unnecessarily impose additional costs on the trucking industry, particularly on small businesses with low profit margins.

We support the position of the American Trucking Association (ATA), our national affiliate organization, and the interstate commerce issues that may arise from this regulation. It is clear that CARB does not have the authority to impose chip reflash on interstate trucks, thus making this a single-state mandate. Our members transport 85% of the shipments that travel on California's highways, and can make a significant near-term impact voluntarily.

On November 18, 2003, CTA's Board of Directors voted unanimously to aggressively pursue the voluntary upgrade of CTA member trucks. CTA members have committed to voluntary reflash, and are working on an education and outreach program within the industry. This outreach effort will include workshops, demonstrations, and a multi-media program to encourage our members to request software upgrades at the time of their next rebuild. We have hired a graphic artist to produce a "flasher truck" bumper sticker so members receive recognition for their efforts. We request that CARB assist us so we can reach as many trucking companies as possible during our outreach.

Sincerely,

Stephanie Williams
Senior Vice President

SRW:slh

CC: Members of the California Air Resources Board

Subject: Biodiesel
Resent-From: regreview@arb.ca.gov
Date: Mon, 9 Feb 2004 14:21:45 -0800
From: "Thomas M Mason" <tom.mason@cox.net>
To: <regreview@arb.ca.gov>

Dear Ms. Johnston:

My name is Thomas M Mason and I am a shareholder of Biodiesel Industries, Inc, a builder and supplier of biodiesel plants, both fixed and mobile. Biodiesel Industries has a big plant in Las Vegas, NV and recently completed arrangements with the US Navy for the use of an MPU (Mobile Production Unit) on the Navy base in Port Hueneme.

Biodiesel Industries was sent to India by the US government to discuss the constuction and use of biodiesel manufacturing plants using a tree native to India. The tree contains oil-like fluid which can be converted by the Biodiesel Industry plant into biodiesel fuel, thus creating a cheap and renewable energy source for life-giving electrical energy production facilities in places which, at present, do not have electricity.

Today's diesel engines used in both trucks and cars can burn biodiesel without expensive modifications and thus can immediately begin to help clean up the environment in California using the renewable energy source, biodiesel. Biodiesel meets the federal government guidelines planned for 2007 and meets California's guidelines today.

Because of the benefits to air quality and the benefits from reduction of dependence on fossil fuel and using a renewable energy source - plus helping to turn a waste-management issue into a positive benefit (converting used cooking oil and other oils into biodiesel), I urge you you to do what you can to have biodiesel included in the list of acceptable alternative fuels for the state of California.

Sincerely,

Thomas M Mason
San Juan Capistrano, CA
949-661-7816